

JAN 16 1960

RECEIVED .....



191 - 29467

LILLIAN M. PEARCE,

Appellee,

v.

EDWIN H. CHENEY, et al,

Appellants.)

10/59  
32  
**234 I.A. 619**

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed Apr. 30, 1924.

MR. PRESIDING JUSTICE TAYLOR delivered the opinion of the court.

This is an appeal by the defendants from a judgment in the Municipal Court in the sum of \$522.00, in favor of the plaintiff Lillian M. Pearce for real estate commissions.

The case was tried before the court without a jury. The evidence shows, substantially, the following:

On August 8, 1922, the plaintiff, a licensed real estate broker, solicited the defendant, Cheney, to let her endeavor to sell the property in question, 715 North Linden avenue, Oak Park. The property at that time was for sale, and had already been put in the hands of about twenty-six real estate agents in Oak Park. On the same date, Cheney, who was part owner of the property, wrote to the plaintiff describing, in detail, the house and lot, stating that the price was \$12,000.00; that there were mortgages on the property aggregating \$12,350.00; that it could be arranged so that only \$3500.00 in cash would be required; and stating, further, "We are very anxious to dispose of this house during the fall renting season, and if it is in order, will be glad to give a bonus of \$100 to



JAN 16 1984

234 I.A. 619

APPEAL FROM  
MUNICIPAL COURT  
OF CHICAGO

WILLIAM M. FENNER,  
Appellee,  
v.  
EDWIN M. CHENEY, et al.,  
Appellants.

Opinion filed Apr. 30, 1984.

MR. PRESIDING JUSTICE TAYLOR delivered the opinion  
of the court.

This is an appeal by the defendant from a  
judgment in the Municipal Court in the sum of \$232.00,  
in favor of the plaintiff William M. Fenner for real  
estate commissions.

The case was tried before the court without a  
jury. The evidence shows, substantially, the following:

On August 8, 1982, the plaintiff, a licensed  
real estate broker, solicited the defendant, Cheney, to  
let her endeavor to sell the property in question, 715  
North Linden Avenue, Oak Park. The property at that time  
was for sale, and had already been put in the hands of  
about twenty-six real estate agents in Oak Park. On the  
same date, Cheney, who was past owner of the property,  
wrote to the plaintiff describing, in detail, the house  
and lot, stating that the price was \$19,000.00; that there  
were mortgages on the property aggregating \$12,380.00; that  
it could be arranged so that only \$6600.00 in cash would be  
required; and stating, further, "we are very anxious to  
dispose of this house during the fall real estate season, and  
need to give a bonus of \$1000



your salesman in addition to your own commission in the matter if that will expedite a sale." In an effort to obtain a customer for the property, the plaintiff advertised the property twice in a paper called, Oak Leaves, published in Oak Park. In that advertisement, the property was described, and it was therein stated, "\$3500 cash necessary to make this your home." In response to that advertisement one Irving Levinton (who shortly afterwards, on August 29, became the actual purchaser) and his wife, when out driving, looking for a house, and by reason of having seen the plaintiff's advertisement, called at the plaintiff's home, and she sent her daughter, Mildred Pearce with Levinton and his wife to see the property in question. There they met Cheney, and she introduced the Levintons. They were all there about twenty minutes. Mildred Pearce testified that the Levintons looked at the place and liked it; that at that time nothing was said about the price; that the next day Mrs. Levinton called and she showed her through the house; that afterwards, pursuant to an appointment, she called up Mr. Levinton; that Mrs. Levinton had meanwhile been taken to a hospital; that they talked to him over the telephone a number of times and he called them up on the telephone. The plaintiff testified that after the property was shown to Levinton, Cheney called up and asked what the Levintons thought of it; that she told him Mrs. Levinton was quite pleased with it, also, Levinton, but not the price; that she went once, afterwards, to Cheney's house and he said he was glad she had made progress; that on August 15, about a week after she had shown the property to the Levintons, she received a letter from Cheney reducing the price from



your witness in addition to your own testimony in the matter is that will expedite a sale." In an effort to obtain a purchaser for the property, the plaintiff advertised the property twice in a paper called, Oak Leaves, published in Oak Park. In that advertisement, the property was described, and it was therein stated, "\$5000 each necessary to make this your home." In response to that advertisement one Irving Levinson (who shortly afterwards, on August 23, became the actual purchaser) and his wife, when out driving, looking for a house, and by reason of having seen the plaintiff's advertisement, called at the plaintiff's home, and the next day, August 24, visited her.

Digitized by the Internet Archive  
in 2010 with funding from

CARLI: Consortium of Academic and Research Libraries in Illinois

Levinson. There they met Cheney, and she introduced the Levinsons. They were all there about twenty minutes. Cheney testified that the Levinsons looked at the place and liked it; that at that time nothing was said about the price; that the next day Mrs. Levinson called and she showed her through the house; that afterwards, pursuant to an agreement, she called up Mr. Levinson; that Mrs. Levinson had meanwhile been taken to a hospital; that they talked to him over the telephone. Cheney of them and he called them up on the telephone. The plaintiff testified that after the property was shown to Levinson, Cheney called up and asked what the Levinsons thought of it; that she told him Mrs. Levinson was quite pleased with it, also, Levinson, but not the price; that she called, afterwards, to Cheney's home and he said he was glad and asked if he could see the property the next day. He then called the Levinsons and they came to the property the next day.



\$18,000.00 to \$17,500.00; that she talked with Levinton on the telephone and he said he would not go over \$17,000.00, and she told him she would suggest the offer; that she submitted it to Cheney and he said he could not accept it off-hand, that he would accept Levinton's terms of so much a month, but wanted \$500.00 more; that she talked with Levinton over the telephone and he said he would not pay over \$17,000.00 if he had to put up a garage; that that was the last conversation she had with Levinton; that after the contract was signed - August 29, 1922 - she was notified by one Sheehan, and went right away to see Cheney; that he told her that Levinton did not care to close the deal with a woman; that Cheney said, "I was sure you were entitled to the commission, that I made the remark to the salesman for Mr. Sheehan." She further testified that after she found the sale had been made, she saw Cheney at his house, and asked him about the sale, and Cheney said they claimed she had abandoned it and that the purchase had been closed through another agent; that she told Cheney that she was very much surprised because she had introduced him and had made the sale; that he said he considered that she had made the sale; that she asked him on what terms it had been sold to Levinton, and he said on the terms that she had previously made, with something about a garage; that he put the matter up to the other agent and the latter appeared to think she would not claim a commission; that Cheney said he felt the commission was due to her; that he told her Levinton had signed the contract. Mildren Pearce corroborated the plaintiff, and said that on August 27, they called on Cheney and asked him what it meant, why they werenot entitled to the commission, and that Cheney said, in substance, that he so agreed with



\$12,000.00 to \$17,500.00; that she talked with Levinson  
on the telephone and he said he would not go over \$17,500.00,  
and she told him she would suggest the offer; that she sub-  
mitted it to Cheney and he said he could not accept it at  
that time, that he would accept Levinson's terms of no more than  
\$17,500.00 more; that she talked with Levin-  
son every two telephone and he said he would not pay over  
\$17,500.00 if he had to put up a garage; that that was the  
last conversation she had with Levinson; that after the  
contract was signed - August 29, 1932 - she was notified  
by one Sheehan, and went right away to see Cheney; that he  
told her that Levinson did not come to close the deal with  
a woman; that Cheney said, "I was sure you were entitled  
to the commission, that I made the remark to the salesman  
for Mr. Sheehan." She further testified that after she found  
the sale had been made, she saw Cheney at his house, and  
asked him about the sale, and Cheney said they claimed she  
had abandoned it and that the purchase had been closed  
through another agent; that she told Cheney that she was very  
much surprised because she had introduced him and had made  
the sale; that he said he considered that she had made the  
sale; that she asked him on what terms it had been sold to  
Levinson, and he said on the terms that she had previously  
made, with something about a garage; that he put the matter  
up to the other agent and the latter appeared to think she  
would not claim a commission; that Cheney said he felt the  
commission was due to her; that he told her Levinson had also  
the contract. Alvin Pearce corroborated the statement, and  
said that on August 27, they called on Cheney and asked him  
what it meant, why they nearest entitled to the commission.



them that he had asked Sheehan why the plaintiff was not entitled to the commission.

Articles of agreement, dated August 29, 1932, were offered in evidence. They showed an agreement to sell to Levinton for \$17,400.00, payable \$3,000.00 in cash, with a provision for a deed after certain installments had been paid, and, also, a provision for a mortgage for the balance of the purchase price. There was offered in evidence, also, a signed memorandum between the same parties, providing for the erection by Levinton of a garage, not to cost over \$1,000.00, and that he should paint the dwelling house at an expense, not to exceed \$100.00.

Cheney, substantially, corroborates the evidence offered for the plaintiff. He admits meeting the Levinton's, for the first time, when Mildred Pearce showed them through the house. He says he heard from the plaintiff that Levinton was interested in it. He, also, testified that the deal was closed with Levinton for \$17,400.00, and in addition he got an improvement on the property of \$1,100.00. Levinton admitted that he saw an advertisement in reference to some River Forest property, and that he and his wife drove out and were shown the property in question, and met Cheney on the premises. He testified that he said he would not like to pay more than \$17,000.00 for it; that in a telephone conversation with the plaintiff, she said it probably could be bought for \$17,500.00, but that he answered, saying he was not interested in that price. He, further, testified that, about two weeks after, he and his wife had discussed it with a few brokers, and when they drove out they concluded to stop at Sheehan's - a real estate office - and see what they





had; that they were told at that office, of the property in question; that they, Levinton and his wife, told Reed, a real estate salesman at that office, that they, Levinton and his wife, had been shown that property by the plaintiff, but could not get together on price and terms and had dropped the matter; that Reed suggested that there might be a way of working it out; that he told Reed that he, the witness, had the money; that as the place needed to be improved, he suggested that the price be graduated; that, as Reed seemed favorable, he told him to figure it out; that he, the witness, made Reed a proposition similar to the one in the Articles of Agreement; that he then gave Reed a check for \$500.00 as earnest money, and signed the contract. On cross-examination he testified that he signed the contract about two weeks after Mrs. Pearce had shown him the property; that he had not met Cheney, nor known of the property, until she took him over; that no definite price was made at that time; that he had several conversations with Mrs. or Miss Pearce, regarding the property; and that through the plaintiff he made an offer of \$17,000.00.

From the foregoing, it is difficult to resist the conclusion that the plaintiff was the essential procuring cause of the sale. That the trial judge erred in so concluding, does not seem to be even plausibly maintained. Levinton had the right to close the deal with whom, and as he saw fit. But in retaining the services of others, he could not blot out what the plaintiff had done for Cheney. She had been given a promise by Cheney that if she would procure a purchaser she would be recompensed; and having procured a purchaser, the promise became merged in a binding,





and as far as she was concerned, an executed contract. The fact that a slight change was made in the terms, whereby instead of the fixed price of the completed sale being \$17,500.00, it was \$17,400.00, with the qualification that the purchaser should build a garage, which was not to exceed \$1,000.00 in cost, on the premises, is no substantial evidence that the plaintiff failed to procure an able and willing purchaser at terms satisfactory to the defendant, Cheney, himself, testified that he told the plaintiff that from what he knew he thought she was entitled to a commission, as she had brought a customer endeavoring to buy the lot at terms similar to those upon which it was sold. Where the evidence of both agent and principal is that the services have been rendered, it is strong proof that a commission has been earned. It is the claim for the defendants that the plaintiff abandoned the possible sale to Levinton. The evidence does not support that contention. Mildred Pearce testified that after the time she first showed the property, she called Levinton up, pursuant to an appointment to talk with Mrs. Levinton, but the latter had been taken to a hospital. She says she called Mr. Levinton up on August 27, and asked him if it would not be pleasant when Mrs. Levinton came home from the hospital to have her go to the house in question; that she told Mr. Levinton how much Mrs. Levinton liked it, and how much she was interested in it; and that Mr. Levinton said that was exactly what was going to happen. She further testified that the deal had already been closed through another broker, and she asked Levinton, at the time, if it was on the plaintiff's terms with Cheney, and he admitted it was. The plaintiff, herself, testified that she talked to Levinton, after he had been shown the property,



and on the 1st of January, 1900, the plaintiff was notified by the defendant that the property was being sold by the defendant. The plaintiff then filed a motion for summary judgment, which was granted by the court. The court found that the defendant had failed to establish its claim for the property and that the plaintiff was entitled to summary judgment. The court also awarded costs to the plaintiff.

once or twice. And, further, that when Levinton said he liked the property, but could not pay the price of \$18,000.00, and would not go over \$17,000.00, she told him that she knew that the party/<sup>who</sup> was conducting the sale was away, but as soon as she could, she would suggest the offer and ask him to make one; that she then submitted the offer to Cheney; that Cheney said he could not off-hand accept it; that he would accept Levinton's terms as to so much a month, but not as to \$17,000.00; that he wanted \$500.00 more; that she then talked about that situation with Levinton; and the latter said, "I won't pay over \$17,000.00 as long as I have to put up a garage." The agency to sell the property was given to the plaintiff on August 8, 1922; and the contract of sale is dated August 29, 1922, showing an interim of only three weeks, and Cheney, who first met the Levintons at the house, as the result of the plaintiff calling him up and asking him to be there for that purpose, says he talked with Levinton generally about the house, and that that occurred about the 15th or 20th of August, and, further, that he had several talks with the plaintiff and her daughter, quite obviously there was no abandonment. Further, the evidence of the plaintiff that she received a letter from Cheney on August 15, reducing the price from \$18,000.00 to \$17,500.00, shows that the negotiations were going on and that the matter was still alive, and that the only obstacle to immediate consummation was a difference of \$500.00 in price. In view of what the record shows, to claim that Sheehan, in the language of defendants' brief, "was the procuring and efficient cause of the sale" does not seem quite reasonable.



once in London, and, further, that when London will be  
linked the property, but would not pay the value of the, and, and,  
and would not be over \$17,000.00, and told him that was true  
that the party <sup>who</sup> was conducting the sale was away, but as soon  
as the matter, she would suggest the other and tell him to  
write only that she then submitted the letter to Cherry; that  
Cherry said he would not attend to it; that he would  
submit Lavinton's letter as to the sale, but not as to  
the sale itself. He said that the sale was being  
about that situation with Lavinton; and the latter said,  
"I won't pay more \$17,000.00 as long as I have to pay up  
a dollar." The letter to sell the property was given to the  
plaintiff on August 1, 1900, and the contract of sale is  
dated August 22, 1900, showing an amount of only three hundred  
and thirty, and that was the Lavinton at the house, as the  
report of the plaintiff selling him up and selling him to be  
shown for that purpose, says he talked with Lavinton several  
about the house, and that that occurred about the 15th or  
20th of August, and, further, that he had several talks with  
the plaintiff and her daughter, who frequently came to see  
him, and, further, the plaintiff at the plaintiff that he  
received a letter from Cherry on August 15, containing the  
sum of \$17,000.00 as \$17,000.00, which was the money  
which was paid to him and that the money was still paid to  
him and that he was to be paid for Lavinton's house and a half  
of \$17,000.00 in cash. He said that the money was paid  
to him that day, as the plaintiff at that time asked  
for the proceeds and that the money of the sale was

There are many decided cases on the subject, but upon analysis, it is found that each depends primarily upon its particular facts, and that no two are alike. In Rigdon v. More, 236 Ill. 382, the court said, "It is sufficient if the sale is effected through the efforts of the broker or through information derived through him." Citing Gusendorf v. Schmidt, 55 N. Y. 319; Stewart v. Wether, 32 Wis. 344, and Lincoln v. McClatchie, 36 Conn. 136. In our opinion the plaintiff was the procuring cause, and was diligent and not chargeable with having abandoned the prospective sale. It is claimed for the defendant that "there was no contract for any liquidated amount of commission," and that there is no evidence in the record as to what constitutes the usual and customary commission which is claimed by the plaintiff. In the statement of claim, the plaintiff set up that the plaintiff became and was "entitled to the usual real estate commission plus \$100; that the purchase price to Mr. Levinton was, to-wit, \$17,500, and that the customary and usual commission is three per cent on said sum or \$525, which with the additional sum of \$100, makes \$625 due and owing the plaintiff." The trial judge entered judgment for \$522.00, which was three per cent on \$17,400.00. The defendant Cheney, in the affidavit of merits for the three defendants, denied that he, as agent, requested the plaintiff to find a purchaser or that, as agent, he promised to pay the plaintiff the usual commission plus \$100 if the plaintiff should procure a purchaser. But in addition to that denial, it is affirmatively stated "that on or about August 8, 1932, defendant Cheney told the plaintiff that that property was for sale for \$18,000 and offered to pay the plaintiff the usual real estate commission plus a





bonus of \$100 for negotiating a sale of the property, but the plaintiff did not negotiate a sale of the property for \$19,000 or any other amount; that it was agreed that said commission and bonus were to be paid only in the event that the sale of said property was consummated through the efforts of plaintiff as agent. As it appears, therefore, that the statement of claim set up that the customary and usual commission was three per cent; that that was not denied in the affidavit of merits; and that in the affidavit of merits it was stated that the defendants "agreed that said commission and bonus were to be paid only in the event that the sale of the property was consummated through the efforts of plaintiff as agent," it was not necessary for the plaintiff to put in affirmative evidence as to the usual and customary charges for commission. A close analysis of the affidavit of merits demonstrates that it was not intended to deny that the usual and customary charge was as set up in the statement of claim.

Considering, carefully, what the record discloses, and the argument for the defendant, we feel bound to conclude that there was a fair trial, without any substantial error, and that the judgment should stand.

The judgment, therefore, will be affirmed.

AFFIRMED.

O'CONNOR, J. AND THOMSON, J. CONCUR.





WILLIAM O. TRAINER,

Appellee,

v.

FRANKLIN LANDIS,

Appellant.

234 I.A. 619

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

Opinion filed Apr. 30, 1934.

MR. JUSTICE O'CONNOR delivered the opinion of the court.

By this appeal the defendant seeks to reverse a decree which ordered that there be an accounting between the parties concerning commissions growing out of certain real estate transactions.

Complainant in his bill alleged that in the month of October, 1913, he entered into an oral agreement with the defendant to form a limited co-partnership as real estate brokers "insofar as the same pertained to the making of land contracts for others for the purchase, sale or exchange of lands for building properties, located in Chicago." It was further alleged that the defendant was an experienced real estate broker with reference to lands and ranches and that the complainant was an experienced broker in relation to properties located in Chicago. The bill then sets up six real estate transactions, which were consummated under the agreement and also five other real estate transactions which were not consummated and out of which no commissions were earned. The six consummated transactions were known and designated as follows: (1) Cooper-



212.4.1.66

Williamson, (2) Becker-Bartlett, (3) Folsie-Cooper, (4) Paddington, (5) Lands in Pottawatomie County, (6) Birch-Cooper.

It is further alleged that in the oral agreement entered into the time during which it should continue was not mentioned, but that it was impliedly understood and agreed that it should continue until dissolved by mutual agreement. The bill then alleged that all profits and losses received as a result of such partnership were to be divided equally between them; that the profits and losses had been divided between the parties as to three of the consummated transactions; and as to the remaining three there had not been a settlement; that there was \$500.00 due and unpaid on account of the Pottawatomie County lands; \$1375.00 remaining unpaid on the Cooper-Williamson transaction; and that there had been no accounting or division in reference to the sale of the Paddington property. The principal controversy on this appeal is in relation to the commissions earned on account of the Paddington property. Complainant taking the position that he was entitled to one-half of such commissions and defendant contending that complainant has no interest in them.

It is alleged in the bill that in the month of July, 1913, the defendant requested the complainant to assist and cooperate in bringing about an exchange of some 64,000 acres of land located in New Mexico and owned by one John D. Rand, for the Paddington apartment building located in Chicago, owned by one E. F. Shelleberger; that complainant had put the defendant in touch with Shelleberger in





reference to the matter. It is then alleged that both complainant and defendant acted as agents for the respective properties; that they both exhibited the Paddington apartment building to Hand the owner of the land in New Mexico; that complainant investigated and made a report of the income of the Paddington property to Hand and "on divers occasions, too numerous to mention at the request of said Landis" conferred with Hand and the defendant at the latter's office in reference to the exchange of the properties; that practically all of the correspondence, which was of great volume, was carried on by complainant and dictated by him, although written on defendant's stationery; that complainant did the work in reference to another transaction pending at the same time, while the defendant used his efforts to close the Paddington transaction; that in January, 1914, prior to the closing of the Paddington deal the defendant without any cause or reason, informed complainant that notwithstanding the partnership agreement between them, complainant had no interest in the Paddington transaction, nor in the commissions amounting to \$45,000.00 arising out of such transaction, although complainant was ready and willing to do his part of the work.

The defendant answered the bill denying that there was any partnership agreement entered into between them and alleged that for a long time prior to October, 1912, he had been a regular licensed broker, conducting his business in Chicago and that the complainant was also engaged in the same business in Chicago; that it had long been the custom for real estate brokers in effecting sales or exchange of real estate, where one broker represented





one party and another the other party to the transaction, to pool their commissions and divide it equally, and that such arrangement had been entered into by the parties.

The answer further sets up that there was never any agreement to divide the expenses and commission in reference to the Paddington property; that the defendant represented both Hand and Shelleberger and that he alone was entitled to the commission. The answer also sets up that complainant did not properly account to the defendant for commissions earned in some of the other deals, but that he fraudulently concealed the amount he collected. The defendant in his answer denies that in July, 1913, or at any other time, he requested complainant to assist him in the Paddington transaction and denies that complainant put him in touch with Shelleberger, the owner of the Paddington apartment building. It further denies that the defendant had rendered any services in reference to this matter.

The cause was referred to Granville W. Browning, a Master in chancery of the Circuit Court of Cook County to take the testimony and report the same with his conclusions. The Master proceeded to take proofs and after he had taken 1037 pages of testimony, his term of office expired. He filed the evidence which he had taken with the Clerk of the court. Afterwards complainant moved the court that Granville W. Browning be appointed a special master to complete the hearing and to make up his report. This motion was objected to by the defendant and it was denied by the Chancellor, and the cause was referred to Roswell B. Mason, one of the masters of the court. This order was later set





THE FIRST PART OF THE HISTORY OF THE  
REIGN OF CHARLES THE FIRST, KING OF  
ENGLAND, WAS WRITTEN BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE SECOND PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE THIRD PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE FOURTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE FIFTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE SIXTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE SEVENTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE EIGHTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE NINTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE TENTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.

THE HISTORY OF THE  
REIGN OF CHARLES THE FIRST, KING OF  
ENGLAND, WAS WRITTEN BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE SECOND PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE THIRD PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE FOURTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE FIFTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE SIXTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE SEVENTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE EIGHTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE NINTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.  
AND THE TENTH PART BY THE  
HONORABLE JOHN HOLLAND, ESQ.  
OF THE MIDDLE TEMPLE, ESQ.

aside and afterwards on motion of the complainant, the court appointed Browning as a special master re-referring the cause to him as such special master to consider the evidence theretofore taken and to complete the taking of it and to take up his report. Afterwards in accordance with this order, the parties appeared before Browning, a special master, and introduced further proofs and he made up his report. He found that in 1912, the parties entered into an agreement to carry on "a business for their mutual interest exchanging properties in general, land or ranches for flat buildings, as real estate brokers, and that in such exchanges they were to divide the commissions and meet expenses equally." He further found that a commission of \$480.00, which was received by complainant on a loan growing out of the Davis deal in the Kansas land, should be divided because it was not excepted when the agreement of 1912 was made; that there should also be an accounting by the complainant for commissions growing out of the Williamson-Cooper deal which were involved in a lawsuit by one Beeson against complainant, such accounting depending upon the determination of that suit; that the defendant should account for the commissions growing out of the Paddington transaction. In reference to this the special master found "that the complainant and defendant were working on that proposition for a long time, notably in an attempt to carry through a trade of the Arcola Plantation for the Paddington apartment and finally the trade of the building with one Hand was closed"; that while the Paddington transaction was being made the parties were working on another deal known as the Polae deal; that complainant





gave most of his time to the Folse matter and the defendant to the Paddington. The special master also found that no notice was given by the defendant to the complainant of any intention to break off their agreement until January, 1914, when the Paddington commission had already been earned.

Objections of the defendant to this report were overruled and they were order to stand as exceptions. Before the chancellor, the defendant was given leave to file an additional exception to the effect that the special master after his appointment and before entering upon his duties had not taken the oath or given the bond required by the statute. The court overruled all exceptions and entered a decree in accordance with the report of the special master. In the decree the court found that upon an inspection of the record that the special master did not subscribe to an oath or file a bond, but further found that the failure to do so was waived by the defendant appearing before the special master and offering testimony, without objection.

The defendant prosecutes this appeal from the decree and urges as grounds for reversal that (1) there was no authority for the appointment of the special master. (2) that the special master having failed to take the oath or file the bond required, the proceedings before him were illegal and void and (3) that the overwhelming weight of the evidence is to the effect that complainant was not entitled to any part of the fees received from the Paddington transaction.





1. The defendant contends that there was no authority for the appointment of the special master because the office of master in chancery is created by the statute (Sec. 1, Chap. 90, Cahill's Statutes) and that section 5 of that chapter provides for the appointment of a special master "whenever it shall happen that there is no master in chancery in any county, or when such master shall be of counsel or of kin to either party interested, or otherwise disqualified or unable to act in any suit or matter" and that this section authorizing the appointment of a special master was not applicable in the instant case because there are several masters in Cook County who were in no way disqualified under the statute. And it is argued that the court should have appointed one of such masters and that there was no authority for the appointment of the special master. We think this argument is unsound. The power of a court of chancery to appoint a master and to refer a cause to him where an issue of fact arises, is inherent in this court. Such power is ancient and well established. 17 Ency. Pl. & Pr. 933; see also Henderson Chancery Practice, Sec. 135. If in the instant case a court of chancery were not authorized to appoint a special master, it would fall far short of being able to do justice between the parties. Here the master in chancery to whom the cause was regularly referred had taken 1037 pages of testimony when his term of office expired, and it certainly is not in consonance with equity and good conscience to refuse to appoint a special master or commissioner to take the balance of the proofs and to make up his report upon all the evidence adduced. Nor are we without authority to



[illegible]

sustain the appointment of the special master. Sec. 1 of our Chancery Act (Chap. 32) provides that courts of chancery "shall have power to proceed therein, according to the mode hereinafter prescribed; and where no provision is made by this Act, according to the general usage and practice of courts of equity." Section 39 of the same chapter provides that a court of chancery may "upon default, or upon issue being joined, refer the cause to a master in chancery or special commissioner, to take and report evidence, with or without his conclusions thereupon." In Farnsworth v. Strasler, 12 Ill. 482, where an objection was made to the appointment of a special commissioner to execute a decree of the court, it was said; "We cannot say that the Circuit Court erred in appointing a special commissioner or master, to carry the decree into execution, although it was business properly appertaining to the duties of the resident master in that county, yet the court was vested with the authority to appoint the special commissioner, to execute the decree." And in Davis v. Davis, 30 Ill. 180, where a special master had been appointed, the court said: "It is quite common and necessary for a court to resort to the aid of a special master, for many purposes."

In the instant case we think the appointment of Granville W. Browning as special master in chancery was entirely proper. Whether he should be technically termed a special master or a special commissioner is immaterial and unimportant.





2. Nor do we think there is any merit in the defendant's contention that the proceedings before the special master were null and void, because the special master had not subscribed to the oath or filed a bond. While it would have been proper and regular for the special master to have done so, yet the defendant by appearing before such special master and taking part in the proceedings there without making any objection, cannot now be heard to question the proceedings. Had the defendant when he first appeared before the special master raised the point now made it is obvious that the oath and affidavit could have then been filed and the proceedings made regular in every particular. This was not done, but the first complaint seems to have been made upon the hearing of exceptions to the report before the Chancellor. This was too late and the defendant by appearing before the special master and failing to make any objections, is now estopped from questioning the report. Pardridge v. Ryan, 134 Ill. 347.

3. It is further contended by the defendant that the overwhelming weight of the evidence establishes the fact that no such agreement was entered into between him and the complainant as found by the master and the chancellor, and therefore, the complainant was not entitled to any commissions earned on account of the Shelleberger-Paddington transaction. To pass on this question it is necessary for us to discuss somewhat in detail the evidence adduced by both parties which is voluminous.

The evidence shows that for a number of years prior to 1911 both complainant and defendant were engaged





in business as real estate brokers in Chicago. Complainant's business was conducted by him under the name of Southard and Trainer at 3905 Cottage Grove avenue, while the defendant maintained his office in the downtown district. At about that time the evidence shows that complainant's business was in a bad way financially, occasioned as he testified, by the dishonesty of one of his employees. A great many civil suits were brought against him and judgments obtained. The testimony of complainant is that there were fifty or sixty of such suits and that he had been cited in some of the cases in which judgment had been rendered against him in supplementary proceedings in the Municipal Court of Chicago, but was unable to pay any of the judgments. The evidence also shows that complainant was familiar with the sale and exchange of apartment buildings in Chicago, and that the defendant was familiar with the exchange of ranches located in other states for Chicago property including apartment buildings. At about this time (1911), the parties met and it was suggested by the complainant that he and the defendant form a partnership for the purpose of exchanging Chicago property for ranches located in other states, complainant stating that he was in touch with a number of owners of Chicago property and that the defendant had a number of customers who owned large ranches; that the defendant refused to enter into such partnership, stating as a reason that on account of complainant's financial difficulties, he did not want to have his business mixed up with the complainant's as a partner. The evidence further shows that an agreement was entered into at that time. Complainant testified that it was then agreed that where a deal was



7.

made for the exchange of properties, each should obtain his commissions from his own customer and that this was done in a number of deals and until September 26, 1912, when the parties entered into another and different agreement whereby it was agreed that each would devote all of his time to the business of exchanging properties and divide the profits, expenses and losses equally; that this latter agreement was oral and that the period of time for which the agreement was to continue was not mentioned. On the other hand, the defendant testified that the agreement was that in case the parties effected an exchange of properties, they would pool the commissions and divide them equally after deducting expenses. And defendant's position is that under this arrangement a number of deals were consummated and the commissions and expenses divided equally, and that the parties negotiated a number of other matters where the deals were not consummated, and that the agreement was never modified or changed between the parties until January, 1914. The defendant's position further is that from 1911 until 1914, each of the parties conducted his separate real estate brokerage business; that there was no connection between the parties, except where they both worked upon a deal.

The master and the chancellor found in accordance with the contention of complainant. The substance of the material evidence is as follows:

Complainant testified that he has known the defendant since 1906; that both were then engaged in the real estate business; complainant's place of business



[illegible]

being at No. 3405 Cottage Grove avenue and the defendant's business in the Tribune Building; that in 1911 he talked with the defendant about a real estate deal known as the Davis-Cooper deal; that the defendant represented Davis, who owned a large ranch in Kansas and desired to exchange it for Chicago property; that the complainant represented Cooper, who owned Chicago property; that it was agreed at that time, on account of the complainant's financial difficulties, that in case this transaction was put through, complainant should get his commissions from Cooper and the defendant from Davis; that the deal was consummated; that complainant collected \$3875.00 from Cooper as his commission and the defendant \$4,000.00 from Davis as his commission, all of which was in accordance with the terms of the agreement. Complainant further testified in reference to this deal that after it was closed Landis asked Cooper for \$1,000.00 on account of commissions; that Cooper asked complainant if it was all right to pay Landis, and that the witness stated that it was; that a check was given to Landis by Cooper for \$1,000.00 and afterwards another check for \$937.50; that this was a loan made by complainant to defendant and that the defendant repaid it; that it was not one-half of the commissions. The evidence further shows that Davis gave his check for \$3,000.00 on account of the commissions to defendant and complainant testified that after the defendant deducted expenses, the defendant gave him a check for one-half of what remained, viz. \$1328.38 and at that time complainant gave a receipt for this to the defendant as follows:

"Dec. 13, 1912.





Received from Franklin Landis, \$1398.38, on account of Davis' commission and expenses. W. O. Trainer."

Complainant further testified that he did not know why defendant gave him a check for this exact amount because it was not a division of the commission.

We have given all the testimony on this subject, much of which we have not adverted to in this opinion, our careful consideration and have been unable to escape the conviction that it does not support the decree. It is perfectly clear from complainant's own testimony what was done in the matter. It is unreasonable to contend, as counsel does, that complainant loaned the defendant \$1937.50 and that afterwards it was repaid. Moreover this is not all of this transaction. The evidence shows that complainant was paid \$480.00 as commissions in obtaining a loan in Kansas, which was earned as a part of the transaction; that he did not account for this to the defendant; and although denied by the complainant, it is clear from the evidence that the defendant had on numerous occasions asked complainant why he had not paid one-half of this amount to the defendant, and the reply was that it had not yet been collected and probably never would be collected; that the last time when this matter was discussed between the parties, the defendant produced the cancelled check showing that complainant had long before collected the money. This transaction was not mentioned in complainant's bill because he says that it took place before the oral agreement was entered into between the





parties, viz. September 26, 1912 and which is the date of the contract involved in the instant case, although he had alleged in his bill another transaction - the Becker-Bartlett - which took place prior to the Cooper-Davis matter and which he alleged was one of the transactions for which he sought an accounting. On the trial, however, and in this court, he takes the position that neither of these transactions are properly involved in the present proceeding.

As to the Becker-Bartlett Transaction, the evidence shows that about 1911 the parties began to negotiate in reference to this matter, complainant representing Bartlett, who owned Chicago property and the defendant Becker, who owned land outside of Chicago. The deal was consummated. Bartlett never paid any commission. Afterwards the defendant brought suit against Becker to recover a commission. This matter was disposed of and the commission divided equally between complainant, defendant and one Whipp, an attorney who had been a party to the transaction. The complainant testified that the agreement existing between them at that time was that he was to obtain his commission from Bartlett and the defendant from Becker, and that while he got one-third of the commission paid by Becker after deducting expenses - \$574.00 - this was not payment of the commission, but was given to him because after the deal was consummated, he agreed to and did advance money toward the prosecution of the suit against Becker, and it was in accordance with this agreement that the money was paid him. A consideration of all the testimony on this question has lead us to the positive conclusion that complainant never advanced any money nor agreed to do so, but that what was paid him was on





account of the commission and the only commissions collected in that transaction were those paid by Becker. And the evidence is that Whipp was a party to the transaction and for that reason the commission was divided into three parts.

As to the Cooper-Williamson transaction, the evidence shows Cooper was complainant's customer and Williamson the defendant's; that in that transaction there was conveyed to Cooper some ranch property in Kansas, and it is the testimony of the defendant that Cooper before making that deal insisted that both complainant and defendant continue to represent him so as to dispose of the Kansas lands. There is some dispute on this point, but the fact is that complainant and defendant did represent Cooper in the Williamson transaction, and in that matter Cooper paid a commission to complainant, giving him two checks, one for \$375.00, and afterwards another for \$2500.00. Complainant afterwards reported to the defendant that Cooper had paid but \$2,000.00 and rendered a written itemized statement to the defendant showing this. The statement also contained a number of items of expense and after deducting the expenses from \$1,000.00 which was one-half of the amount complainant said he had received, there was a remainder of \$855.55, which amount the complainant paid defendant. Complainant did not tell the defendant that he had collected \$3875.00, but it was made to appear that he had received but \$2,000.00. On the trial of the case, complainant testified that one Beeson of Kansas claimed that \$2500.00 commission was due him for what he had done in the matter, and that he had brought suit against complainant in that state; and that it was still pending in the Supreme Court; and for this reason he did not pay the defendant half of the \$3875.00





which he had collected. If Beeson was claiming \$2500.00 from the complainant, complainant certainly would not pay \$1,000.00 to the defendant after deducting expenses. The explanation is not convincing and we are unable to escape the conclusion that complainant was not fairly accounting for all the money he had received in that matter.

Coming to the Paddington deal the testimony shows that about November or December, 1913, which was prior to the close of the Cooper Williamson deal, M. J. Trainer, a brother of the complainant, who was in the real estate business in Chicago represented one Kate Scanlon, who owned a plantation located in Texas, spoke to complainant about it and the latter in turn to the defendant who represented Shelleberger, owner of the Paddington property, and as a result of this, negotiations were had whereby it was sought to exchange the Paddington property for the Texas plantation. After considerable work had been done, the matter was abandoned. Afterwards and about July, 1913, the defendant through one Seagraves, who seems to have been connected with a railroad company in the southwest, was put in touch with one Hand, who owned a large ranch in New Mexico and through the efforts of the defendant, Hand and Shelleberger were brought together with a view of exchanging their property. A tentative agreement was made about January 14, 1914, which seems to have been later modified in the following June or July. There was an exchange of the property and the deal was consummated. It is principally to recover one-half of the commission paid the defendant by Shelleberger that complainant filed his bill. Complain-



which he had received. It seemed as if the  
 from the commission, and the defendant's  
 \$2,000.00 to the defendant after deducting expenses. The  
 commission is now working and we are waiting for some  
 the commission that defendant was not fairly receiving  
 for all the money he had received in that respect.

Based on the testimony of the defendant

about that amount received as interest, \$100, which was paid  
 to the office of the United States Court, U. S. District  
 a portion of the commission, and was in the year 1900  
 defendant is going to represent the fact that the  
 and a commission received in 1900, which is defendant's  
 about it and the latter is now in the defendant's hands  
 presented defendant, under of the defendant's property,  
 and as a result of this, defendant was not working  
 it was sent to the United States Court, U. S. District  
 some defendant. The commission was not paid until  
 the order was executed. Defendant was about \$100,000  
 the defendant through the defendant. The time in 1900 was  
 numbered with a certain number in the defendant, and was  
 in touch with the bank, and was a large bank in the  
 having and having the office of the defendant, and was  
 defendant was not working in view of defendant  
 that property. A defendant's property was not paid until  
 was, \$100,000, which was in 1900, and was paid in  
 the following year of 1901. There was no receipt of the  
 property and the fact was defendant. It is defendant's  
 in respect to the defendant's fact was defendant  
 by defendant's fact defendant's fact was defendant

ant's position is that he is entitled to one-half of these commissions on account of the oral agreement between him and the defendant of September 26, 1912, and that he actively assisted in bringing about the exchange of the properties.

Complainant testified that after closing the Cooper-Williamson transaction in Kansas, he and the defendant were coming in on the train to Kansas City and were talking about their dealings with each other, the defendant stating that he was familiar with ranch property and the complainant with apartment building property in Chicago; that the defendant then said: "You know these buildings and we will devote all our time to it and divide the profits and share the expenses and losses"; and that complainant there accepted the proposition. Complainant testified that on numerous occasions the defendant spoke of him as his partner; that after that time they both looked over several pieces of real estate outside of Chicago and endeavored to make a number of deals by exchanging such property for other property, some of which were successful and some unsuccessful. The uncontroverted evidence, however, is that both parties continued to maintain their separate offices as they had theretofore and conducted their businesses in the same manner. The only change that appears in the evidence is that they apparently put in more time in their joint efforts. It is clear that there was no substantial change after September 26th in the method in which the two parties conducted their respective businesses. This conversation as testified to by complainant as having taken place on September 26th, is denied in toto by the defendant, as he also substantially





denies all of the material evidence offered by the complainant.

In addition to the oral agreement, complainant contends that he put in considerable time and labor on the transaction; that about October 25th, 1913, at the request of the defendant, he went to the latter's office and there met Hand, the owner of the New Mexico Ranch; that he went with the defendant, Hand and other parties to examine the Paddington apartment building, which is located on the north side of Chicago; that he prepared a statement of the receipts and expenses of this apartment building, delivered the same to Hand and two days later put in several hours in conference with Hand explaining the statement to him; that afterwards Hand returned to New Mexico, and that complainant prepared a great many telegrams and letters which were sent to Hand, endeavoring to have him exchange his ranch for the apartment building; that most of the letters and telegrams were actually written by the defendant, but that complainant assisted in preparing them. He further testified that about January 14th he saw the defendant and at that time the defendant demanded payment of several items of expense which the parties had incurred in the several deals; that one of the items mentioned was 30¢ paid for a telegram to one Scott of Alabama; that defendant told complainant that Scott had put defendant in touch with Hand, the owner of the New Mexico ranch; that at that time the defendant told the complainant that the latter had no interest in the Paddington transaction, but that the matter was the individual business of the defendant. Complainant also offered testimony



THESE ARE THE ONLY TWO CASES IN WHICH THE COURT

HAS DECIDED.

THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

CASE, THE COURT IN THE FIRST CASE, IN THE SECOND

of other witnesses to the effect that on different occasions the defendant in the presence of others had referred to the Paddington transaction as though it were a matter in which he and complainant were jointly interested. These witnesses testified in substance that they were present and heard the defendant say in the presence of complainant that complainant should look after the Polse deal which was another real estate transaction and that he, the defendant, was going to the Grand Pacific Hotel to see Hand in reference to the Paddington matter and that the complainant, referring to the latter matter, said: "we" have such a deal and not "I" referring to himself, have such a deal. A reading of the testimony of these witnesses does not add much to complainant's theory of the case, because it is clear that whether the defendant said "we" or "I" is not at all certain.

On the other hand, Edward F. Kennedy, who had an office in the same suite with defendant and one O.J. Gehring, testified that they were familiar with the negotiations being carried on in reference to the Paddington transaction, and that on different occasions when it appeared that the deal was to be consummated, the complainant said in substance that he was sorry he was not in on that deal. The uncontradicted evidence is that on October 25, 1913, complainant went to defendant's office and there met Hand for the first time. At that time there were present complainant, defendant, Hand, Curry and Piggott. Complainant testified that was the first time he met Hand; that defendant stated that they were going out to see the Paddington and requested



The first question is the extent to which the  
government has succeeded in its efforts to  
bring about a more efficient and economical  
administration. It is true that the  
government has made considerable progress in  
this regard, but it is also true that there  
is still much to be done. The government  
has succeeded in bringing about a more  
efficient and economical administration in  
many respects, but it has not succeeded in  
bringing about a more efficient and economical  
administration in all respects. There is  
still much to be done in this regard.  
The government has succeeded in bringing  
about a more efficient and economical  
administration in many respects, but it  
has not succeeded in bringing about a more  
efficient and economical administration in  
all respects. There is still much to be  
done in this regard.

In the second place, it is necessary to  
consider the extent to which the  
government has succeeded in its efforts to  
bring about a more efficient and economical  
administration. It is true that the  
government has made considerable progress in  
this regard, but it is also true that there  
is still much to be done. The government  
has succeeded in bringing about a more  
efficient and economical administration in  
many respects, but it has not succeeded in  
bringing about a more efficient and economical  
administration in all respects. There is  
still much to be done in this regard.  
The government has succeeded in bringing  
about a more efficient and economical  
administration in many respects, but it  
has not succeeded in bringing about a more  
efficient and economical administration in  
all respects. There is still much to be  
done in this regard.

complainant to accompany them and to make up a statement of the receipts and disbursements in connection with the building so as to enable Hand to determine whether he would exchange his New Mexico ranch for the building; that they went to the Paddington and examined it, complainant being given figures in reference to the receipts and disbursements; that at the defendant's request complainant returned to his office, made up a statement and submitted it to Hand who was then in Chicago; that this was on Saturday and on the following Monday, at the defendant's request, complainant again went to the latter's office and had a conference with Hand and went over the statement with him in detail. Hand, Figgott, Curry and defendant, who were present at Landis' office on Saturday, testified that at that time Landis told complainant that if the latter would make up a statement of the receipts and disbursements in relation to the Paddington building, as he had done in other transactions, defendant would pay him \$100.00 if the deal was consummated, and that complainant accepted the proposition. This is denied by complainant. There is other evidence in the record, some in connection with the Paddington transaction and considerable more in relation to other matters in which the parties were jointly interested, but we think it would serve no useful purpose to analyze or discuss the evidence further.

Upon a careful consideration of all the evidence, we are of the opinion that it cannot be said that there was an agreement entered into between the parties in September, 1913 as would make the relation between the parties such as to require any notice to terminate it. We think it perfectly clear, in view of the evidence, that the agreement between the parties was that wherever there was a transaction brought





about by the mutual efforts of the parties, the commissions and expenses should be divided equally; and that it did not affect their separate businesses in any other respect, and the finding of the master and chancellor to the contrary is not based on any evidence in the record.

The remaining question is, does the evidence show that complainant did anything to assist in bringing about the exchange of the property between Hand and Shelleberger? The fact that he did some work in connection with the defendant in endeavoring to exchange the property for the Texas plantation is immaterial, because that transaction was never consummated. All of the evidence shows, with little or no contradiction, that both Hand and Shelleberger were customers of the defendant; that the complainant never came in touch with Shelleberger at all in reference to the matter; that he saw Hand but on two occasions,- the day they went to examine the Paddington building and the following Monday. Both Hand and Shelleberger testified that Landis was their broker, and that they had no connection with the complainant at all. The only evidence that can be considered as tending to show that complainant did anything in reference to this transaction is in the two conferences with Hand at Landis' office and the preparation of the statement of receipts and disbursements in connection with the Paddington building, and in this respect Hand, Piggott, Curry and the defendant testify that at that time the defendant stated he would pay complainant \$100.00 for preparing the statement and the only evidence to the contrary is the evidence of the complainant. Moreover there is the testimony of Leslie H. Whipp to the effect that



which by the nature of the subject, the  
 the subject is divided into two parts, the  
 and the subject is divided into two parts, the  
 is not much to be desired in the subject.

The subject is divided into two parts, the  
 first part is divided into two parts, the  
 second part is divided into two parts, the  
 third part is divided into two parts, the  
 fourth part is divided into two parts, the  
 fifth part is divided into two parts, the  
 sixth part is divided into two parts, the  
 seventh part is divided into two parts, the  
 eighth part is divided into two parts, the  
 ninth part is divided into two parts, the  
 tenth part is divided into two parts, the  
 eleventh part is divided into two parts, the  
 twelfth part is divided into two parts, the  
 thirteenth part is divided into two parts, the  
 fourteenth part is divided into two parts, the  
 fifteenth part is divided into two parts, the  
 sixteenth part is divided into two parts, the  
 seventeenth part is divided into two parts, the  
 eighteenth part is divided into two parts, the  
 nineteenth part is divided into two parts, the  
 twentieth part is divided into two parts, the  
 twenty-first part is divided into two parts, the  
 twenty-second part is divided into two parts, the  
 twenty-third part is divided into two parts, the  
 twenty-fourth part is divided into two parts, the  
 twenty-fifth part is divided into two parts, the  
 twenty-sixth part is divided into two parts, the  
 twenty-seventh part is divided into two parts, the  
 twenty-eighth part is divided into two parts, the  
 twenty-ninth part is divided into two parts, the  
 thirtieth part is divided into two parts, the  
 thirty-first part is divided into two parts, the  
 thirty-second part is divided into two parts, the  
 thirty-third part is divided into two parts, the  
 thirty-fourth part is divided into two parts, the  
 thirty-fifth part is divided into two parts, the  
 thirty-sixth part is divided into two parts, the  
 thirty-seventh part is divided into two parts, the  
 thirty-eighth part is divided into two parts, the  
 thirty-ninth part is divided into two parts, the  
 fortieth part is divided into two parts, the  
 forty-first part is divided into two parts, the  
 forty-second part is divided into two parts, the  
 forty-third part is divided into two parts, the  
 forty-fourth part is divided into two parts, the  
 forty-fifth part is divided into two parts, the  
 forty-sixth part is divided into two parts, the  
 forty-seventh part is divided into two parts, the  
 forty-eighth part is divided into two parts, the  
 forty-ninth part is divided into two parts, the  
 fiftieth part is divided into two parts, the  
 fifty-first part is divided into two parts, the  
 fifty-second part is divided into two parts, the  
 fifty-third part is divided into two parts, the  
 fifty-fourth part is divided into two parts, the  
 fifty-fifth part is divided into two parts, the  
 fifty-sixth part is divided into two parts, the  
 fifty-seventh part is divided into two parts, the  
 fifty-eighth part is divided into two parts, the  
 fifty-ninth part is divided into two parts, the  
 sixtieth part is divided into two parts, the  
 sixty-first part is divided into two parts, the  
 sixty-second part is divided into two parts, the  
 sixty-third part is divided into two parts, the  
 sixty-fourth part is divided into two parts, the  
 sixty-fifth part is divided into two parts, the  
 sixty-sixth part is divided into two parts, the  
 sixty-seventh part is divided into two parts, the  
 sixty-eighth part is divided into two parts, the  
 sixty-ninth part is divided into two parts, the  
 seventieth part is divided into two parts, the  
 seventy-first part is divided into two parts, the  
 seventy-second part is divided into two parts, the  
 seventy-third part is divided into two parts, the  
 seventy-fourth part is divided into two parts, the  
 seventy-fifth part is divided into two parts, the  
 seventy-sixth part is divided into two parts, the  
 seventy-seventh part is divided into two parts, the  
 seventy-eighth part is divided into two parts, the  
 seventy-ninth part is divided into two parts, the  
 eightieth part is divided into two parts, the  
 eighty-first part is divided into two parts, the  
 eighty-second part is divided into two parts, the  
 eighty-third part is divided into two parts, the  
 eighty-fourth part is divided into two parts, the  
 eighty-fifth part is divided into two parts, the  
 eighty-sixth part is divided into two parts, the  
 eighty-seventh part is divided into two parts, the  
 eighty-eighth part is divided into two parts, the  
 eighty-ninth part is divided into two parts, the  
 ninetieth part is divided into two parts, the  
 ninety-first part is divided into two parts, the  
 ninety-second part is divided into two parts, the  
 ninety-third part is divided into two parts, the  
 ninety-fourth part is divided into two parts, the  
 ninety-fifth part is divided into two parts, the  
 ninety-sixth part is divided into two parts, the  
 ninety-seventh part is divided into two parts, the  
 ninety-eighth part is divided into two parts, the  
 ninety-ninth part is divided into two parts, the  
 hundredth part is divided into two parts, the

the defendant and complainant were in his office in reference to obtaining a loan on the Paddington building in case the deal was consummated, and his testimony is to the effect that at that time the complainant had no interest in the transaction. We are, therefore, of the opinion that the overwhelming weight of the evidence is that the Paddington transaction was not a joint matter, but solely brought about by the defendant and that complainant was not entitled to any part of the commission.

The decree of the Circuit Court of Cook County is reversed and the cause remanded with directions to dismiss the bill for want of equity.

REVERSED AND REMANDED WITH DIRECTIONS.

TAYLOR, P.J. AND THOMSON, J. CONCUR.





THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
DIVISION OF PHYSICAL CHEMISTRY  
CHICAGO, ILLINOIS  
U.S.A.  
1954

THE UNIVERSITY OF CHICAGO  
DEPARTMENT OF CHEMISTRY  
DIVISION OF PHYSICAL CHEMISTRY  
CHICAGO, ILLINOIS  
U.S.A.  
1954

RECEIVED 1954

PEOPLE OF THE STATE OF ILLINOIS,

Defendant in Error,

v.

L. A. SHERWIN,

Plaintiff in Error.

234 I.A. 619

ERROR TO

MUNICIPAL COURT

OF CHICAGO.

Opinion filed Apr. 30, 1924.

MR. JUSTICE O'CONNOR delivered the opinion of the court.

Defendant was found guilty of a direct contempt of court and sentenced to 48 hours in the county jail. He sued out this writ of error to reverse the judgment.

The record as prepared by the defendant is in great confusion. Very little of what has been filed here and designated as the record is properly before us for consideration. The judgment order of the court finding the defendant guilty of contempt and sentencing him together with the bill of exceptions signed by the judge imposing the sentence, are the only two matters that can properly be considered.

In the judgment order it appears that the defendant was ruled to show cause instantly why he should not be held in contempt of court, because while a certain civil cause was on hearing, the defendant struck opposing counsel a blow with his fist in the presence of the court. The judgment order then states that the court heard evidence and the argument of counsel and then found the defendant guilty and imposed sentence. Afterwards the mittimus was stayed pending the defendant's



3341A. 612

REPORT OF THE BOARD OF DIRECTORS  
FOR THE YEAR 1911  
AND  
FOR THE YEAR 1912

REPORT OF THE BOARD OF DIRECTORS  
FOR THE YEAR 1911

REPORT OF THE BOARD OF DIRECTORS  
FOR THE YEAR 1912

REPORT OF THE BOARD OF DIRECTORS  
FOR THE YEAR 1913

REPORT OF THE BOARD OF DIRECTORS  
FOR THE YEAR 1914

REPORT OF THE BOARD OF DIRECTORS  
FOR THE YEAR 1915

REPORT OF THE BOARD OF DIRECTORS  
FOR THE YEAR 1916

REPORT OF THE BOARD OF DIRECTORS  
FOR THE YEAR 1917

REPORT OF THE BOARD OF DIRECTORS  
FOR THE YEAR 1918

REPORT OF THE BOARD OF DIRECTORS  
FOR THE YEAR 1919

REPORT OF THE BOARD OF DIRECTORS  
FOR THE YEAR 1920

REPORT OF THE BOARD OF DIRECTORS  
FOR THE YEAR 1921

application to this court that the writ of error be made a supersedes, and he was given time within which to file a bill of exceptions. From the bill of exceptions it appears that after the defendant and opposing counsel in the civil case left the court room and had gone to the elevator, some distance from the court room, an altercation arose between them concerning a dispute they had had before the court in the civil suit; that the opposing counsel called the defendant a liar and the latter struck him when they were near the elevator shaft and out of the presence of the court; that two bailiffs of the court who were near the elevator shaft saw the altercation and took the defendant and the attorney before the judge where some matter in the civil cause has just been disposed of. The court interrogated the defendant and the bailiffs. The bailiffs advised the court what had taken place near the elevator and thereupon the court said, "I am holding Mr. Sherwin guilty of contempt of court for fighting. Mr. Sherwin having struck Mr. Yahblonsky." The defendant thereupon stated to the court that Yahblonsky had called him a liar twice in the presence of the court and repeated the epithet after they had left the court room and were standing near the elevator. The court then stated, "You attempted to strike him in the court room just before you went out. The fact that I did not hold you then in contempt, does not preclude me from doing it now." The court further stated "I am going to punish you for contempt and am pronouncing sentence on you for attempting to strike this man right in front of the bench before you left the court less than six minutes ago. It is true after what happened here you left the court, but you are now back and especially after what happened outside, I am going to punish





you." The court then found the defendant guilty of contempt and imposed the sentence as stated.

The bill of exceptions which consists of seven typewritten pages is signed at the bottom of each page by the trial judge. Attached to the last page appears what purports to be a number of affidavits which the defendant has abstracted, but it is entirely clear to us that these were not considered by the trial court and cannot be considered by us. The so-called record also contains another bill of exceptions from which it appears that several days after the defendant had been found guilty of contempt and sentenced imposed, he went before the Chief Justice of the Municipal Court, the trial judge being the Honorable Warren H. Orr, County Judge of Hancock County who was holding a branch of the Municipal Court in Chicago and who apparently was not holding court in Chicago at the time, and moved the court to vacate the judgment of contempt entered against him. The Chief Justice properly refused to do anything in the matter, but permitted the defendant to file a bill of exceptions. This bill of exceptions consists of four pages signed by the Chief Justice and attached to the last page appears what purports to be a notice served on the States' Attorney and a number of affidavits; these likewise are abstracted but there is nothing to show from the bill of exceptions that they were presented to the Chief Justice and of course, they cannot be considered.

The defendant states in his argument filed here that the attorney with whom he had the altercation, filed in the Municipal Court a number of successive suits in each



1990

© 2007 Blackwell Publishing Ltd *Journal of Internal Medicine* 261: 398–405

THE UNIVERSITY OF CHICAGO

of which he was defeated; that they were between the same parties and involving the same subject-matter, and there appears in the record a certified copy of the so-called "half-sheet" showing matters that took place in the contempt proceeding; also certified copy of what purports to be a complaint made by Yablonsky against the defendant; a certified copy of the "half sheet" filed in the case of Engel v. Neiman and another certified copy of another half sheet in a suit of the same title, and a third certified copy of the same character. These are just put into the document labelled "record". They are, of course, not in any bill of exceptions and are not proper and should have been stricken. This record, of course, was prepared by the defendant. It is all abstracted and argued as though it were properly before us. The only part that can be considered is the judgment order entered by the Honorable Warren M. Orr and the bill of exceptions signed by him.

The defendant contends that the court had no jurisdiction to enter the order finding him guilty of contempt and imposing sentence because he was given no opportunity to file his answer; and that if this were done, he would purge himself of the matters of contempt. Of course, the defendant was entitled to no such right under the law. Where a contempt is committed in the presence of the court, it is a direct contempt and being such, there is no necessity of filing an information or an affidavit on which to base the proceeding. In such case the proceeding is summary, and evidence is seldom heard, because the contempt occurred in the ocular presence of the court. People v. Bard, 259 Ill. 239. The





contempt of court, if any, for which the defendant was punished was not a direct contempt, because it is apparent that the sentence was imposed because of the altercation had outside of the court room near the elevator of which the trial judge had no notice or knowledge until he was afterwards informed by the court bailiffs. It is true the court stated that the defendant had attempted to strike the opposing attorney in the presence of the court when the civil matter was on hearing, but apparently from what the trial court said, this had been condoned because the court permitted counsel to leave the court without imposing any punishment. No doubt the court had considerable provocation as appears from the record, but on the record before us, it is clear that the sentence imposed on the defendant was occasioned by the altercation that took place near the elevator. We think the court was not warranted in the circumstances in finding the defendant guilty of contempt, and the judgment is, therefore, reversed.

JUDGMENT REVERSED.

TAYLOR, P.J. AND THOMSON, J. CONCUR.





HERBERT L. HOCHSCHILD,

Defendant in Error,

v.

GODDARD TOOL COMPANY,

Plaintiff in Error.

234 I.A. 619

ERROR TO

MUNICIPAL COURT

OF CHICAGO.

Opinion filed Apr. 30, 1924.

MR. JUSTICE O'CONNOR delivered the opinion of the court.

By this writ of error the defendant corporation seeks to reverse a judgment of the Municipal Court of Chicago, entered against it and in favor of the plaintiff for \$503.24.

Plaintiff's contention is that he was a stockholder of the defendant corporation and that at a regular meeting of the board of directors a dividend was declared payable to all of the stockholders in accordance with their holdings; that the amount of such dividend under the resolution passed by the Board of Directors due and owing to the plaintiff, was \$503.25.

Plaintiff's position is that the evidence discloses that while the dividend declared was payable to all of the stockholders, the directors of which he was one, waived payment temporarily and that a reasonable time has elapsed, and the payment not having been made, he is entitled to his judgment.



*[Faint, illegible handwritten notes]*

610 .A.1:83

Copyright © 2004 John Wiley & Sons, Ltd.

1. *Chlorophyll a* (Chl *a*) is the primary photosynthetic pigment in most plants and algae. It is a green pigment that absorbs light energy in the blue and red regions of the visible spectrum.

THE UNIVERSITY OF CHICAGO PRESS  
54 EAST LAKE STREET, CHICAGO, ILL. 60601  
U.S.A. AND CANADA  
OTHER COUNTRIES: 100 Brook Hill Drive, Secaucus, N.J. 07094  
U.S.A. AND CANADA  
OTHER COUNTRIES: 100 Brook Hill Drive, Secaucus, N.J. 07094  
U.S.A. AND CANADA  
OTHER COUNTRIES: 100 Brook Hill Drive, Secaucus, N.J. 07094

A number of questions are discussed in the briefs, but in the view we take of the case, it will only be necessary for us to pass upon one of them.

The substantial facts are not in dispute. They are as follows: The board of directors of the defendant corporation consisted of five members. They held a meeting at which four of the directors were present. It was stated at the meeting that on account of some of the corporation's customers who were owing money to it being in financial difficulties, the business of the defendant company was poor, and it was not thought advisable to pay the regular quarterly dividend on the common stock, but that if the directors would agree the regular quarterly dividend would be declared on all of the common stock, except as to that which was held by the directors - (apparently the directors holding a majority of the stock); that all of the directors present, including the plaintiff, agreed to this. And thereupon a resolution was passed which is substantially in accordance with the testimony of the several witnesses given on the trial. The minutes state that there was an extended discussion of the financial condition of the defendant company; that it was pointed out that the business was unsatisfactory on account of business failures of several of the defendant's customers which would result in considerable loss to the defendant. The minutes then continue: "It was then suggested that if Directors, Goddard, Swenson, Moehschild (plaintiff) and C. W. Goddard, would waive payment temporarily of the common stock dividends now due, it would be advisable to pay a cash dividend of 1½% on the balance of the common stock \* \* \*";



It is a matter of fact that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

...the fact is that the...

with the definite understanding that at some future time when convenient to the company, the four directors above mentioned would be entitled to receive  $1\frac{1}{2}\%$  cash dividend on their common stock holdings as of September 30, 1920. It was agreed, however, that payment of this cash dividend should be subject to a decision from the Board of Directors and would not be entered on the books of the company until the Board of Directors had actually authorized payment of same.

"Directors F. S. Goddard, Swenson, and Hochschild, thereupon signified their willingness to agree with the above suggestion.

"On motion duly made, seconded and carried unanimously, the cash dividends are declared in accordance with the above to stockholders of record September 30, 1920, payable October 1, 1920 (except in the case of Messrs. Goddard, Swenson, Hochschild and C. W. Goddard), Common Stock  $1\frac{1}{2}\%$  (excepting as above). Preferred Stock  $1\frac{3}{4}\%$ ."

The foregoing resolution of the Board of Directors, which is in substance according to the testimony of the witnesses, shows that no dividend was declared so far as the directors were concerned, and that plaintiff, being one of them, and having agreed to the resolution, is not entitled to maintain this action. The resolution is specific in stating that no dividend was declared as to the directors. It mentions the directors specifically by name. Nothing could be more certain than that no dividend was declared as to the directors as stockholders. And the evidence shows that, in fact none of them have been paid any such dividend.



THE UNIVERSITY OF CHICAGO  
CHICAGO, ILLINOIS  
JANUARY 19, 1964  
TO THE PRESIDENT OF THE UNITED STATES  
AND THE VICE PRESIDENT  
FROM THE PRESIDENT OF THE UNIVERSITY OF CHICAGO  
AND THE FACULTY OF THE UNIVERSITY OF CHICAGO  
We are pleased to have the opportunity to meet with you and your family in the White House. We are proud of the University of Chicago and its faculty, and we are confident that we can make a significant contribution to the nation's future. We are grateful for the support and encouragement we have received from you and your administration, and we are committed to the highest standards of academic excellence and integrity. We are confident that we can make a significant contribution to the nation's future, and we are grateful for the support and encouragement we have received from you and your administration.

Moreover the judgment could not stand under plaintiff's own theory of the case. It is clear from a consideration of the evidence that at the time the resolution of the board of directors above mentioned was passed, that the finances of the defendant company were such as not to warrant the payment of a dividend on the common stock. The evidence shows that the directors were contemplating a re-financing of the company; that they knew and it was stated that if the dividend on the common stock was not regularly declared, the re-financing would be made difficult, if not impossible. They also knew that if the small stockholders did not receive their regular dividend on the common stock, the fact that the company had not declared its common stock dividend would become public; that this would affect its credit. So that the resolution of the board and all of the evidence clearly shows that it was distinctly understood and agreed that the directors were not to receive any dividend on their common stock until the company's finances would authorize such payment. It is clear that the company at that time did not have the money. No dividend has been paid since that time on the common stock and there is no showing that at any time after the passage of the resolution, it had sufficient money with which to pay a dividend on the common stock held by the board of directors.

The judgment of the Municipal Court of Chicago is reversed with a finding of fact.

REVERSED WITH A FINDING OF FACT.

FINDING OF FACT:

We find as a fact that no dividend was de-



However the judgment which was made  
 respecting the party in the case. It is clear that a  
 consideration of the facts and the law in the case  
 would lead to the conclusion that the judgment was  
 correct. The facts of the case are as follows:  
 The plaintiff, who is a citizen of the State of  
 New York, brought this action against the  
 defendant, who is a citizen of the State of  
 New York, for the recovery of a sum of money.  
 The plaintiff claims that the defendant owes  
 him a sum of money on account of a contract  
 made between them. The defendant denies this  
 claim and asserts that the plaintiff is not  
 entitled to the money. The court has heard the  
 evidence and has rendered its judgment in  
 favor of the plaintiff. The court has found  
 that the plaintiff has proved his case by a  
 preponderance of the evidence. The court has  
 awarded the plaintiff the sum of money which  
 he claims to be due to him. The court has  
 also awarded the plaintiff the costs of the  
 action. The defendant has appealed from the  
 judgment of the court. The case is now  
 before the Appellate Division of the Court of  
 Appeals. The Appellate Division has heard the  
 arguments of the parties and has rendered its  
 judgment. The Appellate Division has affirmed  
 the judgment of the court. The case is now  
 closed.

The judgment of the court is affirmed.  
 The Appellate Division has affirmed the  
 judgment of the court. The case is now  
 closed.

declared on the common stock of the defendant company which was owned by plaintiff and the other directors of the defendant.

TAYLOR, P.J. AND THOMSON, J. CONCUR.



THE UNIVERSITY OF CHICAGO  
 LIBRARY  
 540 EAST 58TH STREET  
 CHICAGO, ILL. 60637

EX-100 (Rev. 1-15-64)

S. A. FRENCH and G. S. FRENCH,  
co-partners, as S.A.FRENCH & CO.,

Plaintiffs in Error,

v.

EUGENE BROWN,

Defendant in Error.)

234 I.A. 620

ERROR TO

CIRCUIT COURT,

COOK COUNTY.

Opinion filed Apr. 30, 1924.

MR. JUSTICE THOMSON delivered the opinion of  
the court.

S. A. French and G. S. French, as S. A. French  
& Co., brought this action against the defendant Brown to  
recover a real estate commission, claimed by the plaintiff  
on the basis of the fact that the plaintiff firm had ef-  
fected a contract between the defendant Brown and one Craig,  
whereby Brown was to exchange a flat building in the City of  
Chicago for a farm in Canada; Brown to convey the flat build-  
ing to Craig and Craig to convey the farm to Brown. The  
parties waived a jury and submitted the evidence to the  
court, and after a hearing, the court entered a finding  
against the plaintiff partnership and in favor of the defend-  
ant, for costs. To reverse that judgment this appeal has  
been perfected.

All the errors referred to in the argument, presented  
in support of the appeal, have to do with the action of the  
trial court with regard to propositions of law, which were  
submitted at the close of the case. It is the contention  
that the court erred in marking some of these propositions  
"refused", and in marking others as "allowed". In our opin-



050. A. 1. 2. 3.

2

1997 13 25 1911 2010

Journal of Management Education 32(10) 1039-1054

[illegible]

© 2000 Blackwell Science Ltd, *Journal of Internal Medicine* 247: 399–405

the last will be made and the rest will be made as well.

© 2002 Blackwell Science Ltd *Journal of Internal Medicine* 252: 105–112

... ..

2007-01-01

THE UNIVERSITY OF CHICAGO PRESS

For the purpose of this study, the following hypotheses were formulated:

1947 March, Vol. 12, Edward Sherry, at Wright's 1948 page 4417.

49422-49423 34. *Stenobothrus* sp. n. (10.11.1964) (10.11.1964) (10.11.1964)

© 1987 by The McGraw-Hill Companies, Inc.

ion it would serve no useful purpose to set forth the propositions of law here. In our opinion most, if not all, of those which are discussed in the argument, have no application to the facts disclosed by the testimony as we find it in the record in this case. Furthermore, it is settled that propositions of law serve no purpose so far as this court is concerned. Saltzman v. Lewis Mfg. Co., Ill. App. Court, First District, case No. 27930. Opinion filed December 26, 1923, and cases there cited.

The facts as shown by the evidence are in substance as follows. The defendant had a large flat building which he desired to either sell or exchange, and he listed it for that purpose with a number of real estate brokers in the City of Chicago, among them the plaintiff. In the plaintiff firm the one who had to do, practically entirely, with the proposition involved in this case was one Patton. When Brown listed his property with the plaintiff firm, he left a description of it at the plaintiff's office, together with a statement of the encumbrances and, as he testified, stated at the time, "any deal you get up let me know." After the defendant had thus listed his property, the Craig deal apparently came up. At this time Brown was in poor health and was in Michigan much of the time, coming to Chicago a few days of each week. He had an agent whose name was Whitehead, who apparently had complete charge of his real estate affairs. Whitehead representing the defendant and Patton, of the plaintiff's firm, representing other parties, made a number of attempts to get together on a deal involving a sale or exchange of the defendant's flat building, but none of them





materialized. Finally, one Ramsey, representing Craig, got together with Patten in an effort to see whether the latter had anything to offer in exchange for the Craig farm in Canada. Patton suggested the Brown property and it was shown to Craig and his wife and they became interested in it. The matter was taken up with Brown and it would seem from the testimony that at the time Brown was in a rather bad condition physically and the approach to Brown was made through Whitehead. Brown was unwilling to entertain the suggested deal unless he knew more about the farm. Whitehead testified that Brown was unwilling to incur any expense incident to sending someone up to Canada to investigate the farm. He further testified that it was to the interest of all the brokers involved, including himself, to have the deal go through, and he represented to the other brokers that he thought if he went up and investigated the farm and found it all right and he was in a position to recommend the deal to Brown, the latter would go into it; and it was finally arranged that Whitehead was to go up and look the farm over, at the expense of the brokers, and to this end the plaintiff firm put up about \$135.00 and Whitehead put up the balance and gave ten days or two weeks of his time to the work that was necessary.

A written contract was drawn up, the parties to which were Craig and Brown, in which Craig undertook to convey the Canadian farm to Brown and Brown undertook to convey his Chicago property to Craig. This contract was executed by Craig. When Whitehead returned from Canada, he talked with Brown and told him he had concluded from his inspection of





the farm that the deal was a good one for Brown to make and he urged Brown to go into it. Brown was still reluctant to do so, and hesitated some short time further, but he finally signed the contract on condition, however, that he should not be obliged to pay any commissions unless the deal went through, and in this connection he required Whitehead to give him a statement in writing, in the shape of a letter, in which Whitehead stated that Brown was not to be obligated for commissions unless the deal was consummated. Whitehead testified that he then told Patten that Brown had signed the contract, but that in order to induce him to take that action it had been necessary for him to agree to the condition which the defendant had imposed, to the effect that the defendant was not to be under obligation to pay commissions unless the deal went through. Patten took the stand and in his testimony denied that Whitehead had ever made that statement to him. It clearly appears from the record that after the defendant had executed the contract it remained in the possession of Whitehead, who was Brown's agent, and apparently always remained in his possession.

Subsequently, Craig refused to carry out the contract. The defendant Brown made every effort to accomplish a consummation of the contract, even going so far as to send Whitehead on a second trip up to Canada to institute legal proceedings. These proceedings were never begun, however, because an examination of the title, preliminary to the institution of the proceedings, developed the fact that title to the farm was not in Craig but was





in his wife. The record also shows that Craig and his wife were not living together but had separated, and she was dealing with the farm and treating it as her own. It appears from the record that the reason why the defendant executed the contract only on condition that he was not to be under any obligation for any commissions unless the deal went through, was that Craig, even at that time, was appearing to be reluctant to go on with the deal, and Whitehead told Brown that that was Craig's attitude. Except as indicated, the facts to which reference has been made, were not controverted.

We are of the opinion that on these facts the trial court held correctly that the plaintiff was not entitled to a commission. The evidence fails to show that the plaintiffs brought "the defendant and the owner of the Canadian farm together" as alleged in plaintiff's bill of particulars. Craig was shown not to be the owner of the Canadian farm. Moreover, there is no evidence showing or tending to show that there was ever any agreement by the defendant to pay the plaintiff a commission to procure a contract of either sale or exchange. The property was merely listed in the plaintiff's office with the request that any deal they had to suggest be submitted. Even if it be assumed that the plaintiff firm was the defendant's broker, in bringing about the execution of the contract in question, we are not in a position to say from the evidence in the record that the trial court was not warranted in concluding that Whitehead was the defendant's personal agent and that although the defendant had signed the contract, he made only a conditional delivery of it, if any at all, for





the contract always remained in Whitehead's possession and was signed and turned over to him by Brown, only on the condition that he was not to pay commissions unless the deal went through. And, further, we are not in a position to say that the trial court was not warranted in concluding from the testimony that the latter fact was communicated to the plaintiff's representative.

In spite of the efforts of the defendant to have the contract carried out, it was never carried out, and, for the reasons we have stated, and quite apart from other questions that are discussed in the briefs, we are of the opinion that the defendant never became liable to pay any commission to the plaintiff firm on this transaction.

The judgment of the Circuit Court is therefore affirmed.

JUDGMENT AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.



The proposed change was made in Williams's manuscript and was signed and dated over to him by Fisher, only to the confusion that he was not to pay attention unless the deal went through. Now, further, we can see in a plain text that the deal must not be executed in Williams's type the meaning that the latter was not intended to be Williams's responsibility.

In view of the efforts of the Government to have the contract carried out, it was never carried out, and the Government was not aware of the fact that the contract was not carried out in the middle, we are of the opinion that the Government never carried out to pay any consideration to the latter for his services.

The signature of the Government is therefore  
Attest,  
[Signature]

Witness, J. L. and J. L. [Signature]

8 - 27895

GUIDO BETTI,

Defendant in Error.

v.

SAM CARNESSECHI,

Plaintiff in Error.

234 I.A. 620

ERROR TO

MUNICIPAL COURT

OF CHICAGO.

Opinion filed Apr. 30, 1924.

MR. JUSTICE THOMSON delivered the opinion of the court.

The plaintiff Betti brought this action in the Municipal Court of Chicago against the defendant Carnesecchi, seeking to recover the amount claimed to be due on a series of eleven promissory notes for \$50 each, with interest. The defendant was duly served with summons and entered his appearance together with a demand for a trial by jury. On motion, the defendant's time was extended for the filing of his affidavit of merits and within the time as so extended his affidavit of merits was duly filed, in which he alleged in substance that he had been defrauded by the plaintiff, in connection with the consideration for the notes sued upon.

The record recites that the cause having come on for trial in the regular course, and the plaintiff being present and the defendant being absent, a jury was called and sworn to try the issues, after which the evidence was heard and a verdict rendered, finding the issues against the defendant and assessing the plaintiff's damages at \$733.43. Judgment for the plaintiff for that amount was duly entered on March 6, 1922. Under date of March 13,

3321A.380

THE STATE  
DEPARTMENT OF THE  
TREASURY  
WASHINGTON, D. C.  
JANUARY 10, 1910

OFFICE OF THE SECRETARY OF THE TREASURY

TO THE SECRETARY OF THE TREASURY

DEAR SIR:

RE: THE PROPOSED ISSUANCE OF THE

UNITED STATES GOVERNMENT NOTES IN THE AMOUNT OF \$10,000,000, BEARING AN INTEREST OF 4 PER CENT PER ANNUM, DATED JANUARY 1, 1910, AND MATURING JANUARY 1, 1915, FOR THE PURPOSE OF PROVIDING A FUND TO BE USED IN THE CONSTRUCTION OF THE GREAT DIKE AT NEW ORLEANS, LOUISIANA. THE PROPOSED NOTES ARE TO BE ISSUED IN THE AMOUNT OF \$10,000,000, BEARING AN INTEREST OF 4 PER CENT PER ANNUM, DATED JANUARY 1, 1910, AND MATURING JANUARY 1, 1915, FOR THE PURPOSE OF PROVIDING A FUND TO BE USED IN THE CONSTRUCTION OF THE GREAT DIKE AT NEW ORLEANS, LOUISIANA. THE PROPOSED NOTES ARE TO BE ISSUED IN THE AMOUNT OF \$10,000,000, BEARING AN INTEREST OF 4 PER CENT PER ANNUM, DATED JANUARY 1, 1910, AND MATURING JANUARY 1, 1915, FOR THE PURPOSE OF PROVIDING A FUND TO BE USED IN THE CONSTRUCTION OF THE GREAT DIKE AT NEW ORLEANS, LOUISIANA.

Very respectfully,  
THE SECRETARY OF THE TREASURY

THE SECRETARY OF THE TREASURY  
WASHINGTON, D. C.  
JANUARY 10, 1910



1922, the defendant filed his motion to vacate the judgment and that motion was overruled by the trial court. Thereafter, the defendant sued out this writ of error.

The writ of error searches the entire record. We find nothing in the record to justify the amount of the verdict and the judgment entered, even though we assume the plaintiff proved his case as alleged in his statement of claim. At most, assuming that the plaintiff was entitled to a judgment against the defendant, on all the notes sued upon, the amount of the judgment could not properly be as great as that which was entered. There were eleven notes for \$50 each, without any interest specified, due in one, two, three, four, five, six, seven, eight, nine, ten and eleven months from date. They were dated April 25, 1917, and the verdict was returned March 6, 1922.

It appears from the affidavit filed in support of the defendant's motion to set aside the judgment that upon receiving plaintiff's notice of a motion to place this case on the short cause calendar, counsel for the defendant made several attempts to examine the files in the office of the Clerk of the Court, but they had been misplaced and could not be found and that he made inquiry of the clerk as to when the case would appear on the call - "under the working of the new rules" as to short cause cases and he was told that "at the expiration of the ten days notice, the case would be placed on the call at least thirty days ahead."

We are of the opinion that where a judgment has been entered on notes for an amount greater than that apparently due thereon, in the absence of the defendant whose

the following was said at the time:

10-10-68

[illegible]

THE UNIVERSITY OF CHICAGO  
 LIBRARY  
 540 EAST 57TH STREET  
 CHICAGO, ILL. 60637

1488 *Journal of Interpersonal Violence* 26(8)

appearance together with a demand for a jury trial, is on file, upon the case being reached for trial in the regular way, a liberal policy should be adopted in acting upon a motion to set aside the judgment, submitted by the defendant within a few days thereafter, the defense being an allegation of fraud going to the question of the consideration for the notes sued upon.

Under all the circumstances, in our opinion, the trial court erred in denying defendant's motion to vacate the judgment. The judgment of the Municipal Court in favor of the plaintiff and against the defendant, for \$753.42, is reversed and the cause is remanded to that court for a new trial.

JUDGMENT REVERSED AND CAUSE REMANDED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.





PEOPLE OF THE STATE OF ILLINOIS,

Defendant in Error,

v.

WILLIAM LARDNER,

Plaintiff in Error.

234 I.A. 620

ERROR TO

MUNICIPAL COURT

OF CHICAGO.

Opinion filed Apr. 30, 1924:

MR. JUSTICE THOMSON delivered the opinion  
of the court.

An information was filed in the Municipal Court of Chicago against the defendant, Lardner, charging him with attempting to steal "sundry current coins, legal money of the United States of America, of diverse denominations \* \* \* of the value of \$10.00, \* \* \* the property of the Illinois Bell Telephone Company, a corporation." The information further set forth that the defendant in committing an overt act toward the commission of the offense charged, placed a key in the lock of a telephone coin box, and turned the key and opened the box with the intent to steal the coins mentioned, but that he failed in that connection and was intercepted. Defendant entered a plea of not guilty and waived a jury. The evidence was heard by the trial court, after which, the court found the defendant guilty as charged in the information and the defendant was sentenced to imprisonment in the House of Correction for a term of 30 days. To reverse the judgment entered, the defendant has perfected this appeal.

025 ALBES

1

James Earl Ray

THE UNIVERSITY OF CHICAGO LIBRARY

\_\_\_\_\_

\_\_\_\_\_

[illegible]

1950-1951

Journal of Interpersonal Violence 26(10)

Learn more at [www.fishbase.org](http://www.fishbase.org) or contact your local fishery agency.

Excerpt from the New York Times, 1964, reprinted in *The New York Times*, 1964, p. 1.

© 1999 by John Wiley & Sons, Inc. All rights reserved.

[illegible][illegible]

Reproduction and publication of this document are authorized by the copyright owner.

It was a very interesting experience and I will be happy to share it with you.

Received at the office of the Secretary of the Board of Directors of the American Telephone and Telegraph Company, New York, New York, on the 10th day of June, 1908.

... ..



The only point urged in support of the appeal has to do with the weight of the evidence, it being the defendant's contention that there was no evidence at all, submitted in behalf of the People, tending to prove that he was guilty of the charge laid in the information, and that, therefore, the finding and judgment of the trial court were erroneous and should be reversed and set aside by this court.

The telephone coin box involved in this case was located in a telephone booth on the main floor of the U. S. Army Hospital, located on 47th street in the City of Chicago. One Maloney, a guard in that Hospital, testified that about 8 o'clock, on the evening of March 7, 1933, he heard the alarm bell, which is connected with this coin box, ring, whereupon, he immediately walked over toward the telephone booth, and saw the defendant coming out; that he thereupon told the defendant he wanted him for stealing nickels out of the box, whereupon, the defendant said, "Why, no, you got me wrong." This guard testified that he then told the defendant to stay inside for a few minutes, whereupon the defendant began to tussle with the guard and apparently attempt to escape; that this tussling led over toward the stairway and down the stairs, as a result of which the defendant finally ran out of the front entrance with the guard after him, the chase leading across a drive and into a park or parkway, where the guard overtook the defendant and brought him back to the Hospital, and as he was doing so the defendant put his hand in his pocket and began throwing nickels around the street. The guard further testified that he called on someone else nearby to help him, and again the defendant showed fight





and there was apparently some further tussling; that after the guard got the defendant down, with the assistance of the one who came to his aid, from the Hospital, he searched the defendant and found in his pockets \$3.85 in nickels, and four telephone slugs. When the defendant was returned to the Hospital, the police were called and the defendant was taken to the Police Station. It appears that he had a Ford coupe standing in front of the Hospital and he was taken to the Police Station in his own car. He drove the car himself and two of the police officers sat in the back seat. The hospital guard above referred to, testified that after the defendant had been taken into the Police Station he searched his car and found, under the front seat on the gasoline tank, twelve small telephone keys. The captain of collectors for the Illinois Bell Telephone Company was shown the keys just referred to, which had been introduced in evidence, and he testified that they were skeleton keys and further that they would open the coin boxes of the Telephone Company.

The witness last referred to testified that shortly before nine o'clock on the evening in question, he went to the Hospital and examined the coin box in the booth from which the defendant had emerged just after the ringing of the alarm bell, as testified to by the guard. He explained that "the coin box has a seal on it, and I went to investigate to see if there was a seal broken or any robbery, and I seen that there was none on the box and I tested the alarm to see if it was working properly." He further testified that the paper seal referred to was "over the coin box; that he found the seal on this box unbroken and the alarm working properly, and inside





the Box he found about \$13.00 in money. Another employee of the telephone company testified that he installed the bell and alarm device on this coin box and that the alarm would be set off if a key were inserted and given "a trifle of a turn of about, maybe, 1/64th of an inch," and that the box would open if the key were turned all the way.

The defendant took the stand and testified that he had gone to the Government Hospital on the evening in question to visit a man who was in the Hospital, and that when he first entered he went to the telephone booth "to call up my aunt, as I was coming out, and so forth, and then he grabbed me," that he did not hear any alarm; that he did not insert any key in the coin box in the booth; that he had no key with him and that he did not attempt to open the coin box, in any manner. On cross-examination he was shown the keys which had been taken from his car and he was asked what they were and he answered, "Well, they wouldn't have - I don't think they would fit any box in the hospital if they tried them." He was then asked why he had run away and he answered, "I didn't run away. He came up and grabbed me and naturally I pushed him away from me."

In view of the foregoing statement of the testimony, it is our opinion that the argument made by the defendant in support of his appeal, to which we have above referred, is quite untenable. In connection with that argument counsel for the defendant states that the employee of the Telephone Company, who installed the alarm on the coin box involved in this case, "testified that the alarm, could not be set off without breaking the seal," and it was then pointed out that





the employee who examined the box shortly after the defendant was arrested found the seal intact. The testimony of the witness who installed the alarm was not as contended for by counsel. Nowhere in his testimony, as we have examined it in the record, does he state the alarm could not be set off without breaking the seal. No doubt the seal would be broken if the box was opened, but it is not the contention that the defendant succeeded in opening it, but that he merely attempted to do so. The testimony clearly is that the alarm will be set off as soon as a key is inserted in the box and given the slightest turn.

The evidence shows beyond peradventure of any doubt that when the defendant was in this booth the alarm which would be set off in the manner described above, began to ring, and before the guard could reach the booth the defendant stepped out of it; that as soon as the guard made it known that he proposed to detain the defendant, the latter put up a fight and made a nearly successful effort to escape, in the course of which he tried to dispose of a quantity of nickels and telephone slugs that he had in his pockets; that a bunch of skeleton keys was found in his Ford car, which, it was testified would open telephone coin boxes. The keys are attached to the record and speak for themselves. We are very clearly of the opinion that, on the evidence, the trial court was justified in the finding made and the judgment entered.

Other points are made by counsel for the defendant in his brief but they are not referred to in the argument



presented and under the rule 19 of this court they will, therefore, be deemed to have been waived.

For the reasons stated, the judgment of the Municipal Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR, F.J. AND O'CONNOR, J. CONCUR.



THEY WERE FOUND TO BE THE SAME AS THE OTHERS

AND WERE FOUND TO BE THE SAME AS THE OTHERS

THEY WERE FOUND TO BE THE SAME AS THE OTHERS

AND WERE FOUND TO BE THE SAME AS THE OTHERS

AND WERE FOUND TO BE THE SAME AS THE OTHERS

AND WERE FOUND TO BE THE SAME AS THE OTHERS

PEOPLE OF THE STATE OF ILLINOIS,  
Defendant in Error,

v.

STANLEY WALOZAK, THEODORE VIND,  
EMMA P. PIPES, ORVILLE K. BLEVINS,  
EDWARD J. BOATMAN, FRANK AMBORSKI,  
AND GUS RATH,

Plaintiffs in Error.

234 I.A. 620

ERROR TO

CRIMINAL COURT,

COOK COUNTY.

Opinion filed Apr. 30, 1934.

MR. JUSTICE THOMSON delivered the opinion of the court.

By this appeal the defendants seek to reverse a judgment of the Criminal Court of Cook County, sentencing them to the penitentiary for a term not to exceed the maximum fixed by statute, as a punishment for the crime of conspiracy, of which they were convicted.

The indictment involving the defendants contained six counts. Under the first three counts the defendants were charged with conspiring to extort money from three brothers, doing business as Stamos Brothers, in South Chicago. In the last three counts the defendants were charged with conspiring to unlawfully interfere with the business of large numbers of individuals, firms and corporations, engaged in the bakery, restaurant, grocery, meat, general merchandise, and other businesses, in order to extort money from them. All the counts alleged that the conspiracies were unlawfully entered into and carried on, on November 15, 1919, and for a long time prior thereto. The activities of the various defendants in connection with the alleged conspiracy, as shown by the record, covered a period beginning as early as April and

4

1947 NOVEMBER 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

Operation life: 100,000 hours

[illegible]

By this means the defendant and her agent

to which they were committed, as a punishment for the crime of espionage, and as a punishment for the crime of espionage, and as a punishment for the crime of espionage.

SECRET

1. The first of these is the fact that the
 2.
 3.
 4.
 5.
 6.
 7.
 8.
 9.
 10.
 11.
 12.
 13.
 14.
 15.
 16.
 17.
 18.
 19.
 20.
 21.
 22.
 23.
 24.
 25.
 26.
 27.
 28.
 29.
 30.
 31.
 32.
 33.
 34.
 35.
 36.
 37.
 38.
 39.
 40.
 41.
 42.
 43.
 44.
 45.
 46.
 47.
 48.
 49.
 50.
 51.
 52.
 53.
 54.
 55.
 56.
 57.
 58.
 59.
 60.
 61.
 62.
 63.
 64.
 65.
 66.
 67.
 68.
 69.
 70.
 71.
 72.
 73.
 74.
 75.
 76.
 77.
 78.
 79.
 80.
 81.
 82.
 83.
 84.
 85.
 86.
 87.
 88.
 89.
 90.
 91.
 92.
 93.
 94.
 95.
 96.
 97.
 98.
 99.
 100.
 101.
 102.
 103.
 104.
 105.
 106.
 107.
 108.
 109.
 110.
 111.
 112.
 113.
 114.
 115.
 116.
 117.
 118.
 119.
 120.
 121.
 122.
 123.
 124.
 125.
 126.
 127.
 128.
 129.
 130.
 131.
 132.
 133.
 134.
 135.
 136.
 137.
 138.
 139.
 140.
 141.
 142.
 143.
 144.
 145.
 146.
 147.
 148.
 149.
 150.
 151.
 152.
 153.
 154.
 155.
 156.
 157.
 158.
 159.
 160.
 161.
 162.
 163.
 164.
 165.
 166.
 167.
 168.
 169.
 170.
 171.
 172.
 173.
 174.
 175.
 176.
 177.
 178.
 179.
 180.
 181.
 182.
 183.
 184.
 185.
 186.
 187.
 188.
 189.
 190.
 191.
 192.
 193.
 194.
 195.
 196.
 197.
 198.
 199.
 200.
 201.
 202.
 203.
 204.
 205.
 206.
 207.
 208.
 209.
 210.
 211.
 212.
 213.
 214.
 215.
 216.
 217.
 218.
 219.
 220.
 221.
 222.
 223.
 224.
 225.
 226.
 227.
 228.
 229.
 230.
 231.
 232.
 233.
 234.
 235.
 236.
 237.
 238.
 239.
 240.
 241.
 242.
 243.
 244.
 245.
 246.
 247.
 248.
 249.
 250.
 251.
 252.
 253.
 254.
 255.
 256.
 257.
 258.
 259.
 260.
 261.
 262.
 263.
 264.
 265.
 266.
 267.
 268.
 269.
 270.
 271.
 272.
 273.
 274.
 275.
 276.
 277.
 278.
 279.
 280.
 281.
 282.
 283.
 284.
 285.
 286.
 287.
 288.
 289.
 290.
 291.
 292.
 293.
 294.
 295.
 296.
 297.
 298.
 299.
 300.
 301.
 302.
 303.
 304.
 305.
 306.
 307.
 308.
 309.
 310.
 311.
 312.
 313.
 314.
 315.
 316.
 317.
 318.
 319.
 320.
 321.
 322.
 323.
 324.
 325.
 326.
 327.
 328.
 329.
 330.
 331.
 332.
 333.
 334.
 335.
 336.
 337.
 338.
 339.
 340.
 341.
 342.
 343.
 344.
 345.
 346.
 347.
 348.
 349.
 350.
 351.
 352.
 353.
 354.
 355.
 356.
 357.
 358.
 359.
 360.
 361.
 362.
 363.
 364.
 365.
 366.
 367.
 368.
 369.
 370.
 371.
 372.
 373.
 374.
 375.
 376.
 377.
 378.
 379.
 380.
 381.
 382.
 383.
 384.
 385.
 386.
 387.
 388.
 389.
 390.
 391.
 392.
 393.
 394.
 395.
 396.
 397.
 398.
 399.
 400.
 401.
 402.
 403.
 404.
 405.
 406.
 407.
 408.
 409.
 410.
 411.
 412.
 413.
 414.
 415.
 416.
 417.
 418.
 419.
 420.
 421.
 422.
 423.
 424.
 425.
 426.
 427.
 428.
 429.
 430.
 431.
 432.
 433.
 434.
 435.
 436.
 437.
 438.
 439.
 440.
 441.
 442.
 443.
 444.
 445.
 446.
 447.
 448.
 449.
 450.
 451.
 452.
 453.
 454.
 455.
 456.
 457.
 458.
 459.
 460.
 461.
 462.
 463.
 464.
 465.
 466.
 467.
 468.
 469.
 470.
 471.
 472.
 473.
 474.
 475.
 476.
 477.
 478.
 479.
 480.
 481.
 482.
 483.
 484.
 485.
 486.
 487.
 488.
 489.
 490.
 491.
 492.
 493.
 494.
 495.
 496.
 497.
 498.
 499.
 500.
 501.
 502.
 503.
 504.
 505.
 506.
 507.
 508.
 509.
 510.
 511.
 512.
 513.
 514.
 515.
 516.
 517.
 518.
 519.
 520.
 521.
 522.
 523.
 524.
 525.
 526.
 527.
 528.
 529.
 530.
 531.
 532.
 533.
 534.
 535.
 536.
 537.
 538.
 539.
 540.
 541.
 542.
 543.
 544.
 545.
 546.
 547.
 548.
 549.
 550.
 551.
 552.
 553.
 554.
 555.
 556.
 557.
 558.
 559.
 560.
 561.
 562.
 563.
 564.
 565.
 566.
 567.
 568.
 569.
 570.
 571.
 572.
 573.
 574.
 575.
 576.
 577.
 578.
 579.
 580.
 581.
 582.
 583.
 584.
 585.
 586.
 587.
 588.
 589.
 590.
 591.
 592.
 593.
 594.
 595.
 596.
 597.
 598.
 599.

[illegible]



May 1919, and extending into September and October of that year. The defendants contend that the verdict and judgment against them are contrary to law because up to July 1, 1919, the law in Illinois provided that one convicted of conspiracy should be imprisoned in the penitentiary for a period not to exceed five years, and, under that law, the jury fixed the period of punishment within the limitations specified in the statute, and in this connection the defendants argue that if there was any such conspiracy as charged in the indictment, the evidence is such as to show that it was entered into as early as April 1919, when the former law as to conspiracy was in effect, and that any acts that may have followed should be considered merely as a continuance of the initial conspiracy. This contention is not tenable. The evidence in the record shows that although the conspiracy complained of was entered into prior to July 1, 1919, when the Parole Act providing for indeterminate sentences went into effect, acts were committed in furtherance of the conspiracy long after that time. Conspiracy is a continuous offense. The Statute of Limitations begins to run, as to conspiracy, not from the time the conspiracy was entered into but from the time of the commission of the last overt act in furtherance of its object. Cooke v. The People, 231 Ill. 9; Ochs v. The People, 124 Ill. 399. In an indictment for conspiracy the time is to be measured from the commission of the last overt act and not from the origin of the conspiracy. The time actually alleged in all the counts of the indictment in question, was November 1919, and the various acts complained of in connection with the formation of the conspiracy and its execution, as testified to by the witnesses, covered a period of approximately six months prior to that time.

May 1919, and extending into September and October of  
that year. The defendant contends that the statute and  
judgment against him are contrary to law because up to  
July 1, 1918, the law in Illinois provided that an indictment  
of conspiracy should be returned in the preliminary for a  
period not to exceed five years, and, under that law, the gov-  
ernment failed to indict him within the limitation period.  
fixed in the statute, and in this connection the defendant  
argues that if there was any such conspiracy as charged in  
the indictment, the evidence is such as to show that it  
was entered into as early as April 1918, when the federal  
law on to conspiracy was in effect, and that any acts that  
may have followed should be considered merely as a contin-  
uance of the initial conspiracy. This contention is not  
tenable. The evidence in the record shows that although  
the conspiracy complained of was entered into prior to July  
1, 1918, when the statute for providing for indictment  
sentences went into effect, acts were committed in further-  
ance of the conspiracy long after that time. Conspiracy is  
a continuous offense. The statute of limitations begins to  
run, as to conspiracy, not from the time the conspiracy was  
entered into but from the time of the commission of the last  
act in furtherance of the object. United v. The People,  
221 Ill. 2d 406 v. The People, 192 Ill. 2d 406. It is estab-  
lished for conspiracy the time is to be measured from the com-  
mission of the last overt act and not from the origin of the  
conspiracy. The time normally elapsed in all the counts of  
the indictment in United v. The People, 1919, and the return  
was made within the limitation after the formation of the  
conspiracy and the commission, as provided for by the statute.



That being the situation, the verdict and judgment of the Criminal Court were properly based on the law which went into effect July 1, 1919.

The defendants further contend that the evidence in the record is not sufficient to support the verdicts against them. In this connection it is argued that incidents testified to by certain witnesses were improperly admitted in evidence and that motions made to strike out such testimony were improperly overruled, on the ground that it did not involve all of the defendants, nor did the witnesses referred to, testify that they had ever paid anybody any money or that they had ever been asked for any money. Assuming such to be the case, it would not necessarily follow that the evidence was improper. To be competent in a conspiracy case, where the charge is that the conspiracy was formed for the purpose of extorting money, it is not necessary that the evidence show that each defendant was paid money or that every witness was required to pay money. If any evidence offered tends to show a concert of action along a given line, or action by an individual defendant, which in concert with the same or a similar course of conduct by another defendant, was designed apparently for the common end complained of, such evidence is competent. From the very nature of the case the evidence submitted in proof of a charge of conspiracy will be circumstantial. It is argued that there was no evidence of concerted action or agreement between the defendants. While it is true that a common design is the essence of a conspiracy it is not necessary to prove in such a case that the defendants actually came together and agreed to unite in such a design or to engage in a common effort to accomplish it. It is only necessary



that being the situation, the writer was informed of the  
physical facts which were known to the jury and  
that effect was made.

The following further evidence was presented  
in the record is not sufficient to support the verdict  
against them. In this connection it is noted that the  
evidence is not sufficient to support the verdict  
admitted in evidence and that evidence was not  
such testimony was improperly excluded, on the ground  
that it did not involve all of the defendants, and that  
the witness referred to, testified that they had seen him  
anybody any money or that they had ever seen him  
money. Answering such to be the case, it would not neces-  
sarily follow that the evidence was sufficient. It is necessary  
in a conspiracy case, where the charge is that the conspiracy  
was formed for the purpose of obtaining money, it is not  
necessary that the evidence show that each defendant did  
money or that every witness was required to say money. It may  
evidence shown tends to show a conspiracy to obtain money  
given first, or action up as individual defendant, which is  
present with the same or a similar amount of money by  
another defendant, was designed specifically for the common  
and a conspiracy of, such evidence is sufficient. From the  
very nature of the case the evidence submitted in proof of  
a charge of conspiracy will be circumstantial. It is enough  
that there was an evidence of concerted action or agreement  
between the defendants. While it is true that a common  
design in the essence of a conspiracy is not necessary  
to prove in such a case that the defendants actually conspired  
together and entered an agreement or plan to commit the crime.

to show that the defendants, either by acting together or separately, pursued a course tending toward the accomplishment of the same object. It makes no difference whether the evidence shows that the various defendants employed the same means or different means or that one defendant performed one act and another defendant some other act, with a view to attaining the same object, for in either case, the jury will be justified in concluding that they were engaged in a conspiracy to attain such object. In such cases every person involved in a conspiracy is deemed, in law, a party to all the acts done by any of the others in furtherance of the common design. Ochs v. The People, 124 Ill. 399.

In this connection it is the contention that the trial court erred in permitting the testimony of the witnesses Gendek and Magoda and Young, to remain in the record. Gendek testified that he was in the grocery business, with his brother, and that in September 1919, the defendants Boatman, Blevins and Walczak came to their place of business to get them to observe certain hours in the conduct of their business, and the witness explained to them that it was impossible to do so, whereupon, the defendants named, threatened that unless their request was complied with they would see that the witness and his brother would receive no merchandises. On that very day the bread deliveries to the place of business of the witness and his brother, were stopped, the store was picketed and through that means deliveries of sugar to the store were stopped. When this happened the witness went to the Union Headquarters and saw Blevins and Boatman. Later, they came over to the store with Walczak and another, and





demanded \$25.00 for initiation and dues, by the payment of which they said the witness would become a member of the Association and they also demanded \$12.00 further for picket duty. The witness never paid these amounts but gave the fourth party who was present with the three defendants named, a check for \$2.00, which was never cashed. The pickets, however, were withdrawn. Nagoda testified that he was in the grocery and meat business; that in August 1919, the defendant Walczak called upon him and demanded that he join the Union, but the witness said he did not care to, whereupon he said, "If you don't join the Union we will come out and bother you." The witness further testified that later he saw Walczak, Boatman and Blevins about his place of business, and saw them stop a baker who was about to deliver goods to him and also a farmer, and that he heard Walczak direct the latter to drive by -- "this fellow is on the black list." He further testified that he later went outside and asked Walczak what he was doing and he replied that they were going to put the witness out of business and told him he could not buy "a nickel's worth anywhere;" that he drove over to Armour's to get some material but changed his mind when he saw Blevins was there ahead of him; that on this occasion Blevins told him to "come down there and we will fix it up;" that he saw them in the afternoon and at their suggestion he gave Walczak \$16.00 and there was no more picketing. He testified that he paid the \$16.00 so that he could get his meat; that he got a receipt for the money and a card from the Butchers Union, but he never attended any of its meetings and apparently he did not consider himself a member of it. Young testified that he was the proprietor

demanded \$15.00 for investigation and costs, by the payment of  
 which they said the witness would receive a letter of re-  
 commendation and they also demanded \$15.00 for the witness  
 to go. The witness never said those things and gave the  
 letter to the witness and the witness never said  
 a check for \$15.00, which was never cashed. The witness  
 never said that. The witness testified that he was in  
 the grocery and meat business; that in August 1935, the  
 defendant called upon him and requested that he join  
 the Union, but the witness said he did not want to, where-  
 upon he said, "If you don't join the Union we will leave  
 and bother you." The witness further testified that later  
 he saw William, Eastman and Elvina about the time of the  
 trial, and saw them stay a while and then go to deliver  
 goods to him and also a farmer, and that the witness  
 did not the latter to drive by - "This fellow is on the  
 road." The witness testified that he later went outside and  
 saw William, Eastman and Elvina and he testified that they  
 were going to put the witness out of business and told him  
 he could not buy "a nickel's worth anywhere;" that he drove  
 over to Ansonia to get some material but stopped at the  
 home of the witness where there were about 15 men; that in this  
 occasion Elvina told him to "come down there and we will  
 kill it up;" that he was there in the afternoon and at that  
 suggestion he gave William \$15.00 and there was no more  
 shooting. He testified that he paid the \$15.00 to that he  
 would get his money; that he got a check for the money and  
 went from the Ansonia Union, but he never appeared any of  
 the money and apparently he did not receive himself a



of a small grocery and delicatessen store; that in September 1919, Boatman came to his store with three other men and demanded that he observe certain hours in running his store and he replied that he might as well close it up altogether if he observed such hours; that after some discussion they left and the next day there were pickets in front of his store and that by means of their presence, deliveries of goods to his store were prevented. In our opinion all of the testimony referred to was properly admitted.

The defendants make the same contention with respect to the testimony of the witness Cheske. That witness testified that he was the Manager of the Woolworth 5 and 10 cent Store in South Chicago; that he met the defendants Vind and Pipes at a time when there was an attempt to "Unionize the store;" that at this time the witness assured them he was willing to pay the Union scale and comply with the Union hours but that he would sign no agreement as it made no difference to them whether their workers belonged to the Union or not. He further testified that in the latter part of April the Woolworth store began to be picketed and that this continued up to the middle of July, when an injunction was secured stopping it; that these pickets stopped customers from coming into the store, blockaded the entrances, and called the clerks names; that in the course of these proceedings, the defendant Vind advised the witness that he had better do something about the situation and added "There will be trouble." He further testified that he was called down to the store on the morning of July 30, 1919, and found all the windows in the front of the store had been broken. In our opinion, this testimony also was proper. Testimony was submitted tending sufficiently to connect the window breaking with the



of a small grocery and delicatessen store; that in September 1912, Hoffman came to his store with three other men and suggested that he observe certain things in running his store and he replied that he might as well close it up altogether; that he observed such things; that after some discussion they left and the next day there were pickets in front of his store and that by means of their presence, deliveries of goods to his store were prevented. In our opinion all of the above money returned to was properly admitted.

The defendant asks the case concluded with respect to the testimony of the witness Thomas. That witness testified that he was the manager of the Woolworth 2 and 10 cent store in South Chicago; that he got the letter into him and then at a time when there was an attempt to "Unionize the store"; that at this time the witness advised them he was willing to pay the Union dues and comply with the Union laws but that he would sign no agreement as it was an interference to them whether their workers belonged to the Union or not. He further testified that in the latter part of April the Woolworth store began to be picketed and that this continued up to the middle of July, when an injunction was secured stopping it; that there were about a dozen men from coming into the store, picketed the entrance, and called the clerk names; that in the course of these proceedings, the defendant Wind advised the witness that he had nothing to something about the situation and asked "There will be trouble." He further testified that he was called down to the store on the morning of July 20, 1912, and found all the men down in the front of the store and some women. In our opinion the defendant's evidence is true.

defendants as to make such evidence competent. One Oskierko testified that he was a chauffeur in 1919; that on one occasion, the time of which he was not sure, but which he said was about two years prior to the trial, the defendants Blevins, Boatman, and Walczak had engaged his car "to go fishing;" that at first only Blevins and Boatman were in the car and at their direction he turned down Commercial avenue where the Woolworth store was located and just as they were going by that store "the windows started rattling and so we went along the street and went out to Indiana;" that as they went by the Woolworth store and heard "the crash" one of the men sitting in the rear said, "Step on it and let's go." Very apparently this witness was a hostile witness for the prosecution. He apparently had a great deal of difficulty about fixing the time of the occurrence about which he testified. Apparently this case had been tried previously and after attempts to get the witness to fix the time, had failed, the prosecution was permitted, over objection of defendants, to ask the witness whether he recalled, in connection with his testimony at the previous trial, that, referring to the incident in question, he had been asked whether during the summer of 1919 he had been engaged by any of these defendants to go on any trip with them and he had answered, "Yes". In connection with the ruling on this objection the court asked the witness if that refreshed his recollection and he said it did. In our opinion, this inquiry was properly allowed. On cross-examination the witness stated that when they passed the Woolworth store they heard a sound as though the windows broke. On redirect examination he testified that the defendants named saw him around 10 o'clock in the evening and told him they would want him about midnight; that after the windows were broken they told him



...and he was not ...  
...the time of which he was not ...  
...about two years prior to the trial, the defendant ...  
...and ...  
...that at that time only ...  
...their division ...  
...Woolworth store was located ...  
...that store ...  
...the store and went out to ...  
...Woolworth store and ...  
...in the rear said, "Step in ..."  
...this witness was a ...  
...apparently had a great deal of difficulty about ...  
...time of the occurrence about which he testified, ...  
...this case had been tried previously and after ...  
...the witness to the time, had ...  
...question, over objection of ...  
...whether he recalled, in connection with his ...  
...previous trial, that, referring to the ...  
...he had been asked whether ...  
...engaged by any of these ...  
...and he had answered, "Yes". In connection with ...  
...on this question the court asked the witness if ...  
...the witness and he said it was ...  
...they was properly allowed. In cross-examination the ...  
...stated that when they passed the Woolworth store they ...  
...a sound as though the window broke. In ...  
...in ...  
...at ...



to go around the corner, and then told him to "step on it". After again refreshing his recollection as to his testimony at the previous trial, it was brought out that after the occurrence about which he testified, he was told to "keep still." In an effort to show the attitude of this witness the prosecution was properly permitted to show the efforts which had been made to get him into court.

The defendants contend that admitting all the facts testified to by either of the three Stamos brothers, to be true, none of the counts of the indictment are thus made out. In our opinion the record does not support that contention. James Stamos testified that he and his brothers were in the hotel, bakery and restaurant business, and had been located in South Chicago for 20 years; that in the latter part of April 1919, their contract with the waitresses ran out and they had a strike; that the defendant Pipes and a number of delegates from the Union came to their place of business on May 1; that there were fifteen or twenty of them; that Mrs. Pipes presented a contract which she requested the witness to sign; that he stated that he could not do so as he belonged to the Restaurant Association and he suggested to her that she go and see the president of the Association; that she replied that she did not have to, and told the witness that if he did not sign the contract she was going to take away the Union card that was apparently hanging on the wall, or somewhere in view, and the witness replied that that was up to her, whereupon she came inside the counter, picked up the card and called to the girls who were at work in the place, to walk out, which they did; after which, she went over to another restaurant, operated by the Stamos brothers

to go around the corner, and then told him to follow me in.  
After again witnessing his recalcitrance as to the testimony  
of the previous trial, it was thought that after the  
occurrence about which he testified, he was told to "keep  
still." In an effort to show the attitude of this witness  
the prosecution was properly permitted to show the attitude  
which had been made to get him into court.

The defendant contends that admitting all the  
facts testified to by either of the above named witnesses,  
to be true, none of the contents of the indictment are shown  
made out. In my opinion the record does not support that  
contention. James Thomas testified that he and his brother  
were in the hotel, bakery and restaurant business, and had  
been located in South Chicago for 25 years; that in the last  
few years of April 1912, their contract with the witnesses  
was out and they had a strike; that the defendant then and  
a number of delegates from the Union went to their place  
of business on May 1; that there were fifteen or twenty of  
them; that Mr. Blyden presented a contract which the witnesses  
the witness so sign; that he stated that he would not do so as  
he belonged to the Restaurant Association and he suggested to  
get that out and see the president of the association;  
that she replied that she did not have it, and told the wit-  
ness that if he did not sign the contract she was going to  
take away the Union card that was prominently hanging on the  
wall, or somewhere in view, and the witness replied that that  
was up at 127, whereupon she went inside the counter, picked  
up the card and called to the girls who were at work in the  
place, to walk out, which they did, after which, she went



and called out the employees there, on a strike. The following morning there was a general strike at all the restaurants in South Chicago, and the proprietors of these restaurants closed them up. The witness above referred to, testified that his restaurants were picketed; that later, he and his brothers went to see Mrs. Pipes and she said that she had nothing to do with the situation,-- that they would have to see the defendant Vind, who was the president of the Trade and Labor Assembly; that two or three days later they went to the place where Vind<sup>was</sup> and Mrs. Pipes came to the door first and said that their committee did not desire to see all the delegation that was present, but only the Stamos brothers, and therefore the latter were admitted alone. This witness further testified that he saw the defendants Vind, Blevins, and Boatman and also a stranger he did not know; that Vind stated that "You fellows come to this town and make all kinds of money. You get rich and never think anything about the Unions. One of the brothers replied that they had always recognized the Unions, whereupon Vind said, among other things, "You fellows got to do something or get out of town, one of the two;" that one of the brothers replied that they had done nothing to cause them to leave town; that Vind then said, "You know these strikes cost big money," whereupon, he took out a piece of paper and put down three ciphers, with a space left in front of them, and handed it to one of the brothers who looked at it and then asked Vind what he meant and Vind replied, "Can't you read it? It is just exactly what I mean;" that the brother then handed the paper to the witness, who remarked that it meant money and the witness then asked that he and his brothers be permitted to retire to another room for



and called out the employees there, on a Sunday. The following morning there was a general strike at all the restaurants in North Chicago, and the proprietors of these restaurants closed them up. The strikers were ordered to, and the strikers who were ordered to, that his restaurants were closed; that later, on and the strikers went to see him. They said that they had been talking to be with the strikers, - that they would have to see the strikers, who was the president of the strikers and the strikers; that two or three days later they went to the place where <sup>was</sup> and Mrs. Tipton came to the town and said that their committee did not desire to see all the strikers that was present, but only the strikers who were strikers the latter were strikers also. This strikers testified that he saw the strikers, strikers, and strikers and also a stranger he did not know; that strikers stated that "You fellows come to this town and make all kinds of money. You get rich and never think anything about the strikers. One of the strikers testified that they had been strikers for strikers, strikers and strikers, strikers and strikers. You fellows get to be something or get out of town, one of the strikers that one of the strikers testified that they had been strikers to cause them to leave town; that strikers said, "You know these strikers are all money," strikers, he took out a glass of beer and put down some strikers, and a glass half in front of him, and stated it to one of the strikers who testified that he saw strikers and strikers and strikers and strikers, "Don't you know it? It is just exactly what I want," that the strikers had handed the paper to the strikers, and strikers that it would come and the strikers who said that

a few moments, which they did; that very shortly they returned to the other room and offered to pay \$1,000; that Vind said the committee was to have a meeting that night or the next day, and if they were willing to accept that amount, Vind said they would see the Stamos brothers again. This occurred on Saturday and the witness testified that on the following Monday they went back to the same place with \$1200.00. On this occasion Vind, Blevins and Rath, as well as the stranger referred to, were there. The brother who had the money was told to put it down on the table and he did so, whereupon, the witness testified, the defendant Vind took a hat and placed it over the money and it was left there. At the Saturday conference Vind had demanded that the Stamos brothers sell out. They were operating three places of business in South Chicago and they did sell out two of them. At the Monday conference the defendants there present directed the Stamos brothers to call in their successors and they went to the next room and telephoned them to come over to the South Chicago Club, where these transactions were had. They came over and met Vind and Mrs. Pipes and Blevins. The other Stamos brothers testified to the same general effect. There are some differences in their descriptions of these conferences, but in substance they each corroborate the others. Counsel for the defendants contend that the money was not paid by the Stamos brothers for the purpose of preventing a boycott, and that they closed their places voluntarily, and were not prevented by anybody from opening them. After reading the testimony, it is rather difficult to appreciate how such contentions can be made with sincerity.

It is also contended that the testimony of the witness Billis did not tend to support any count in the indictment. That



a few moments, which they did; that very shortly they returned to the other room and offered to pay \$1,000; that that said the committee was to have a meeting that night at the west day, and if they were willing to accept that amount, this said they would see the Stames brothers again. It is admitted on Saturday and the witness testified that on the following Monday they went back to the same place with \$1,000. On that occasion Vint, Elvira and Edith, as well as the younger sister Ned, were there. The brother who had the money was told to put it down on the table and he did so, whereupon, the witness testified, the defendant Vint took a hat and placed it over the money and it was left there. At the Saturday conference Vint had announced that the Stames brothers will not They were operating three places of business in North Chicago and they did well out of them. At the Monday conference the defendants there present discussed the Stames brothers as well in their associates and they went on the next week and telephoned them to come over to the South Chicago Club, where these transactions were had. They came over and Vint and Ned, Elvira and Edith. It is also stated that they testified to the same general effect. There is some difference in their descriptions of these conferences, but in substance they each corroborate the others. Counsel for the defendants would that the money was not paid by the Stames brothers for the purpose of preventing a boycott, and that they closed their place voluntarily, and was not prevented by anybody from working them. After reading the testimony, it is believed sufficient to approximate how each conference could be made with sincerity.



witness was a restaurant keeper in South Chicago. He testified that the second day after he bought a half interest in the restaurant, he was visited by the defendant Pipes, who asked him to join the Union and he replied that he was a restaurant owner and not a worker; and she replied that wherethere were two owners, one of them had to be in the Union. He further testified that three days later she returned and again insisted that he join the Union; that she wanted \$15.00 as an initiation fee, and he finally paid \$7.50, and remarked in a joking way, that she probably got a commission out of it, whereupon, she became very angry and soon after she left, two men came to his place of business and tried to remove the Union card which she had left and these men notified the witness that he should be at the Union Headquarters on the following Thursday. The witness further testified that at the time appointed, he went to the Union Headquarters where he saw the defendants Pipes and Boatman and they asked him what he had meant by making the remark he had, and he explained that he had said it as a joke. The defendants refused to regard it in that light or to receive any explanation from the witness, and he testified that when he endeavored to explain matters one of them said "The more you talk the more fine you get," and that after some conference they told him his fine was \$50 and that he was to pay it within a week. He apparently settled the matter for \$35, which he paid to the defendant Pipes, and he testified that the latter told him that if he didn't pay the fine she would make him go away from Chicago. In our opinion this testimony tends to support the charges in the indictment. It seems entirely clear that the efforts of these defendants

witness was a restaurant keeper in South Chicago. He testified that the second day after he made a half payment in the restaurant, he was visited by the defendant, who asked him to join the union and he testified that he was a restaurant owner and not a waiter, and the witness testified that there were two owners, one of them had to be in the Union. He further testified that after the latter was returned and again insisted that he join the Union; that was about \$15.00 an installment, and he finally paid \$7.50, and remained in a holding way, that the property was a restaurant and at 11, however, the papers were ready and soon after the fact, two men came to his place of business and tried to remove the Union card which she had left and these men notified the witness that he should be at the Union headquarters on the following Thursday. The witness testified that at the time he was notified, he was at the Union headquarters where he saw the defendant and another man and they asked him what he had meant by leaving the property he had, and he explained that he had said it was a joke. The defendant returned to him at that time and he received an explanation from the witness, and he testified that when he was asked to explain matters one of them said "The more you talk the more time you get" and afterwards some commences they told him his time was up and that he was to pay it within a week. He apparently received the money for it, which he paid to the defendant, and he testified that the latter told him that it was his pay and time and would take him to work in Chicago. He was advised that testimony tends to support the charges in the indictment. It would suggest that the charges of these defendants



who are named by this witness, did not amount to a bona fide effort to get a Union member, but it was a perfectly plain case of conspiracy to extort money from the witness. The witness testified that he never attended a Union meeting.

The defendants further contend that the testimony of the witness Smukala should have been stricken from the record. The witness was in the grocery and market business, employing no help. He testified that in 1919, a committee of five visited his store, including three of the defendants, and that Blevins did the talking, telling the witness the hours of opening and closing his place of business, which they demanded he observe; that the witness explained that he could not afford to do that and they replied that they were going to force all the stores to observe those hours. It appears from the evidence that this witness did not follow the directions of the delegation that waited upon him and he testified that about a week later the defendant Boatman returned to see him and stated that he noticed that he was not following the directions that had been given, which the witness admitted, observing that the same was true of his neighbor, whereupon, Boatman cursed the witness and said they had not laid down the rules as to hours, for the witness to break them, and added, "If you don't close up we are going to put you out of business." The argument against this testimony is that it is not shown that any of the defendants demanded money of this witness. As hereinbefore stated, it was not essential to the competency of the testimony of each witness, that money was actually extorted from them. The testimony of this witness showed an experience which was similar to that which was had by many other witnesses, some of whom paid over



who was named by this witness, and was named as a man who  
effort to get a Union member, but it was a perfectly plain  
case of conspiracy to extort money from the witness. The  
witness testified that he never attended a Union meeting.

The defendant further testified that the testimony  
of the witness Gunkins should have been taken from the  
record. The witness was in the property and matter of record,  
employing no help. He testified that in 1911, a committee of  
five visited his store, including three of the defendants,  
and that Givins did the talking, telling the witness the  
hours of opening and closing his place of business, which  
they demanded be observe; that the witness explained that  
he would not attend to do that and they replied that they  
were going to force all the stores to observe those hours.  
It appears from the evidence that this witness did not fol-  
low the directions of the defendant that called upon him  
and he testified that about a week later the defendant  
Gunkins returned to see him and stated that he had not  
he was not following the directions that had been given. When  
the witness admitted, observing that the same was true of his  
neighbor, defendant, Gunkins asked the witness and told him  
that he had laid down the rules as to hours, but the witness re-  
plied that, and asked, "If you don't mind us we are going  
to put you out of business." The argument against this testi-  
mony is that it is not shown that any of the defendants demanded  
money of this witness. As previously stated, it was not  
testified to the company of the testimony of each witness,  
that money was actually extorted from them. The testimony of  
this witness shows an experience which was similar to that

money as fines or dues or under some other disguise, and some of whom did not. All such evidence is entirely competent to show the general line of conduct persisted in by the different defendants, some of them appearing in the testimony of some witnesses and others appearing in the testimony of other witnesses.

It is further contended that what is referred to in the brief of counsel for the defendants as "the Altmeier incident" sustains no count of the indictment. That witness testified that he was in the wholesale meat, fruit and vegetable business, having two markets in South Chicago, employing 25 men as meat cutters, clerks and drivers; that in the latter part of October or the first of November 1919, the defendants Boatman and Blevins came into his store and said they understood the witness was selling material to the steel mills, where there was a strike on, and they told the witness that they had turned back a load of meat he had sent out that morning. He testified that Boatman said, "You're supplying these mills and we are going to run you out of Chicago," and that Blevins said, "We are going to make a bum out of you, -- you have done too well here in South Chicago anyway;" that the witness replied that he had always been a good Union man and that he would go on his truck and drive it himself and that he proposed to supply the steel mills, inasmuch as other markets employing Union men were supplying his customers; that he was having no trouble with the steel mills nor with his employees and he saw no reason why he should discontinue selling these people, whereupon, Blevins, said, "All right, you are not going to do it, we are running South Chicago, and we are going to



money as fines or dues or under some other disguise, and some of whom did not. All such evidence is actively sought to show the general line of conduct maintained in the different businesses, some of them appearing in the testimony of some witnesses and others appearing in the testimony of other witnesses.

It is further contended that what is referred to in the brief of counsel for the defendants as "the defendant's" maintains no count of the indictment. That witness testified that he was in the wholesale meat, fruit and vegetable business, having two markets in South Chicago, employing 25 men as meat cutters, clerks and drivers; that in the latter part of October or the first of November 1937, the defendants Postman and Hives came into his store and with they understood the witness was selling material to the store, where there was a stove on, and they told the witness that they had turned back a load of meat. He has said that they were going to run you out of Chicago, and that Hives said, "We are going to take a few out of you, - you have done too well here in South Chicago anyway; this is witness testified that he had always been a good Union man and that he would go on his track and drive it himself and that he proposed to supply the steel mill, inasmuch as other markets supplying Union men were supplying his customers; that he was having no trouble with the steel mill nor with his employees and he was on reason why he should discriminate selling these goods, materials, etc., this time, you are not going to do it, we are running South Chicago, and we are going to



make a bum out of you." The witness testified that pickets appeared before his place of business on the following day and remained there a week; that Blevins and Boatman appeared each day and walked up and down in front of his stores and stopped customers, telling them not to "go into this man's store, he is a fink and a scab,-- unfair to organized labor." He further testified that shortly after that there was an explosion in the rear of his building. This testimony was objected to on the ground that it was not connected with the defendants. In our opinion the objection was properly overruled in view of the testimony of the witness as to the threats of Boatman and Blevins. In our opinion, for the reasons already stated, the testimony of this witness was competent and material. In this connection, the testimony of one Kenny is to be considered. He testified that he had been a butcher for 32 years and in 1919 was in the employ of Altmeier and that he was a member of the Meat Cutters Union. He testified that in that year a strike was called, and in this connection he had a talk with the defendant Amborski, who was the president of the Meat Cutters Union; that the witness asked him if there was going to be any settlement of the strike and he said there was not going to be any settlement. He testified that he told the defendant Amborski he would not get the wages he was getting at Altmeier's if he was obliged to secure employment elsewhere, and Amborski replied that this did not concern him and he added that they were going to put Altmeier out of business. At Amborski's direction, the witness saw the defendant Walczak and the latter told the witness he had better find work elsewhere, for they were going to put Altmeier out of business.

It is contended by counsel for the defendants that, regardless of what may be said as to any other defendant, it is

make a man out of you." The witness testified that while  
appeared before his class of business on the following day  
and remained there a week. That Hyman and Nathan observed  
each day and walked up and down in front of his store and  
stopped customers, telling them not to go into this man's  
store, he is a kink and a scab, - unfair to organized labor.  
He further testified that shortly after that there was an  
explosion in the rear of his building. This testimony was  
objected to on the ground that it was not connected with the  
subject. In our opinion the objection was properly overruled  
in view of the testimony of the witness as to the character of  
Hyman and Nathan. In our opinion, for the reasons already  
stated, the testimony of this witness was competent and admissible.  
In this connection, the testimony of one Levy is to be considered.  
ed. He testified that he had been a butcher for 25 years and is  
now in the employ of Altmeier and that he was a member of  
the West Cutlers Union. He testified that in that year a strike  
was called, and in this connection he had a talk with the witness  
and Ambroski, who was the president of the West Cutlers Union;  
that the witness asked him if there was going to be any settle-  
ment of the strike and he said there was not going to be any  
settlement. He testified that he told the defendant Ambroski  
he would not get the wages he was getting at Altmeier's if he  
was obliged to become employed elsewhere, and Ambroski re-  
plied that this did not concern him and he asked just what  
were going to put Altmeier out of business. At Ambroski's  
direction, the witness saw the defendant Nathan and the  
latter told the witness he had better find work elsewhere,  
for they were going to put Altmeier out of business.



not shown that Amborski had anything to do with any transaction testified to in the record, beyond showing that he was president of the Union and presided at a meeting at which a strike was called on Altmeyer. We have just referred to the testimony of the witness Kenny to the effect that Amborski stated they were going to put Altmeyer out of business. The witness Tomazcosky testified that he was a meat cutter employed by Altmeyer; that Amborski was the president of his Union and Walosak the business agent, and Boatman and Blevins were other officials of the Union. This witness also testified to the activities of these officials against Altmeyer. The witness Stefansky testified that he ran a butcher shop and grocery; that he had no trouble with the Butchers Union in 1919, but he did have trouble with the chauffeurs. He testified that he knew Boatman and Amborski and that they came to his place of business and directed the observing of certain business hours; that nothing happened to his windows at that time, but they were broken when the Chauffeurs Union was on a strike. In connection with the testimony of this witness, the defendants' contention is that their objection to it should have been sustained. The objection was overruled on the promise of the prosecution to connect the defendants with the breaking of the windows. The contention is further made that the prosecution failed to so connect up the testimony. In our opinion the record shows the contrary. The witness Morrison testified that he was a switchman in the employ of the Baltimore & Ohio Railroad Co., and in 1919 was a taxi chauffeur. He also testified that he knew Boatman, Blevins, Vind and Walosak and that on one occasion they had engaged his cab, about 9 o'clock at night and that he had



was asked that account and anything to do with any other  
action testified to in the record, beyond showing that he  
was president of the Union and presided at a meeting of said  
a strike was called in Alameda. He does not believe in  
the testimony of the witness Henry in the effect that Henry  
has stated they were going to get Alameda out of business.  
The witness Henry testified that he was a coal miner  
employed by Alameda; that Alameda was the president of  
his Union and Alameda the business agent, and Alameda was  
himself other officials of the Union. This witness also  
testified to the activities of these officials against the  
Union. The witness Henry testified that he was a miner  
and Alameda; that he had no trouble with the business  
Union in 1913, but he did have trouble with the Alameda.  
He testified that he knew Alameda was Alameda and that they  
came to his place of business and started the Alameda to  
run his business house; that nothing happened to his witness  
at that time, but they were looking after the Alameda Union  
was on a strike. In connection with the testimony of this  
witness, the testimony of Alameda is that their objection  
to it should have been sustained. The objection was sustained  
on the ground of the Alameda to remove the Alameda  
with the breaking of the Alameda. The objection is sustained  
that the Alameda failed to be removed at the time.  
many. In my opinion the record shows the Alameda. The  
witness Henry testified that he was a witness in the  
employ of the Alameda & Alameda Union Co., and in 1913 was  
a full Alameda. He also testified that he was Alameda,  
Alameda, Alameda and Alameda and that he was Alameda that he

driven them down to the Union Headquarters, and that after leaving there they drove to 94th street and Commercial avenue in South Chicago, where all the defendants named got out and got some bricks; that they then directed the witness to "drive down to the Bush," which was a term applied in South Chicago, to the Polish settlement. The witness then testified that he did not know Stefansky but that he knew where his store was located, at a triangle corner in South Chicago, and he testified that, on the occasion referred to, at the direction of the defendants named, he drove around the corner where Stefansky's store was located, and as he went around the corner he heard a crash of glass, whereupon, one of the men in the machine told the witness to "step on it." The witness was not very definite in his statements of the time of this occurrence, on direct examination, but on cross-examination he stated that it was "three years ago" which would make it in 1919.

We have referred to the testimony of several witnesses who, in our opinion, clearly involved the defendant Amborski and who connected him with several transactions testified to, and apparently carried out by various defendants in furtherance of the conspiracy charged. The witness Cheske, the manager of Woolworth's 5 and 10 cent Store, in South Chicago, who has already been referred to, also mentioned Amborski and stated that he was frequently seen in front of the store during the time it was being picketed and when these pickets were stopping customers and were blockading the entrances and calling the girls names.

The defendants contend that the trial court erred in



driver then down to the Union Headquarters, and that after  
leaving there they drove to 24th Street and Commercial Avenue  
in South Chicago, where all the witnesses named but not  
got some police; that they then directed the witness to  
"drive down to the Bank," which was a bank located in South  
Chicago, to the Police Headquarters. The witness then testi-  
fied that he did not know Stankewitz but that he knew where  
his store was located, at a building corner in South Chicago,  
and he testified that on the occasion referred to, at the  
direction of the defendant named, he drove around the corner  
where Stankewitz's store was located, and as he went around  
the corner he found a man at the door, who was  
and in the machine told the witness to "step on it." The witness  
was not very definite in his statement of the time of this  
occurrence, on direct examination, but on cross-examination  
he stated that it was "three years ago" which would mean it  
in 1914.

He then referred to the testimony of several witnesses  
who, in our opinion, clearly involved the defendant named and  
who connected him with several transactions testified to, and  
apparently carried out by various persons in connection with  
the conspiracy charged. The witness stated, the witness at  
Solomon's 8 and 10 cent store, in South Chicago, who was  
already been referred to, also mentioned Solomon and stated  
that he was frequently seen in front of the store during the  
time it was being operated and when these things were occurring  
crackers and were blocking the entrance and calling the  
police.

The defendant testified that the trial court error in



a number of rulings on the testimony. We have already referred to most of the rulings complained of. It is, of course, unnecessary to make the testimony of any witness competent, that it appear that the occurrence referred to in the testimony, involved all the defendants. As already stated, a conspiracy may be proved by circumstantial evidence. Circumstances disclosed by the testimony in this record, clearly establish that there was a conspiracy to extort money, and a concert of action on the part of the various defendants involved. When a conspiracy is established by the testimony, the law is that the acts and declarations of each conspirator, in furtherance of the common design, are to be considered as the acts and declarations of all of them, and such acts and declarations are evidence as against all of them, whether they were all present or not. One of the witnesses whose testimony is complained of is Lena Coleman. That witness testified that she was employed at the Woolworth Store, working for Mr. Cheske; that she went out on a strike and remained out a month and then left the Union and went back to work; that the only defendant the witness knew was Mrs. Pipes, whom she had seen many times; that during the strike she saw one of the girls "beaten up"; that the witness and the girl referred to, whose name was given, left the store about 9 o'clock one Saturday evening and that four girls attacked the companion of the witness and "beat her up"; that they were workers at the store; that they tore the girl's sweater and knocker her down. It is argued, as to this testimony, that its only purpose was to insinuate that in some way the defendants had something to do with the incident referred to, and

a number of things on the testimony. It was already  
referred to most of the things contained in it. It is  
of course, unnecessary to make the testimony of any  
more competent, that it appears that the testimony is  
referred to in the testimony, involved all the testimony.  
It is already stated, a conspiracy may be proved by circum-  
stantial evidence. It is already stated, that there was a  
conspiracy in this record, clearly established that there was a  
conspiracy to extort money, and a conspiracy of action in  
the part of the various defendants involved. Then a con-  
spiracy is established by the testimony, the law is that  
the acts and declarations of each defendant, in further-  
ance of the common design, are to be considered as the acts  
and declarations of all of them, and each act and declara-  
tion are evidence as against all of them, whether they were  
all present or not. One of the witnesses whose testimony  
is comprised of is Mrs. Coleman. Her witness testified that  
she was employed at the Woolworth Store, working for Mr.  
Lester; that she went out on a strike and remained out a  
month and then left the Union and went back to work; that  
the only defendant the witness knew was Mr. Lester, whom  
she had seen many times; that during the strike she was one  
of the girls "beaten up"; that the witness was the girl  
referred to, whose name was given. Let the witness state  
at least one Saturday evening and that that girl worked the  
company of the witness and "beat her up"; that that was  
workers at the store; that they were the girl's brother and  
knocked her down. It is argued, as to this testimony, that



that in this manner an effort was made to arouse the passions and prejudices of the jury. In our opinion the testimony was competent. The witness Cheske had testified that the store at which the witness Coleman was employed, was picketed for weeks and that in connection with the strike called at their store, the defendant Vind had advised him that he had better do something about it and he said "There will be trouble." The testimony of the witness Coleman shows the defendant Vind was right when he told Cheske there would be trouble, and the same thing was proved when it was shown that all the windows in the store were smashed.

Complaint is also made by the defendants of certain instructions given by the trial court. It is pointed out in this connection that the court gave three instructions on the subject of reasonable doubt, which were given by the prosecution. Too many instructions on the same subject should not be given, but we would not reverse this judgment for the giving of these three instructions. Moreover, the defendants are not in a very good position to urge this point, as they themselves offered five instructions on this subject, four of which the court gave.

Complaint is made of another instruction, wherein the court instructed the jury "that in order to make a valid contract it must be entered into willingly and must express the intention of the parties. Any contract which is the result of coercion or intimidation which induced a person to enter into it by fear of resulting injury to himself or his property by unlawful acts is not a contract and has no force in law. The court by this instruction does not mean to in-



that in this respect an effort was made to remove the prejudice and prejudice of the jury. In our opinion the testimony was competent. The witness Thomas was recalled to the store at which the witness Coleman was employed, was visited for weeks and then in connection with the trial called at their store, the defendant Wind had advised him that he had better do something about it and he said "I will be trouble". The testimony of the witness Coleman shows the defendant Wind was right when he told Thomas there would be trouble, and the same thing was proved when it was shown that all the windows in the store were smashed.

Complaint is also made by the defendant of certain instructions given by the trial court. It is pointed out in this connection that the court gave three instructions on the subject of reasonable doubt, which were given by the prosecution. Two many instructions on the same subject should not be given, but we would not reverse this judgment for the giving of these three instructions. Moreover, the defendant has not in a very long period of time, as this point, he has been advised of the instructions on this subject, and at which the court gave.

Complaint is made of another instruction, wherein the court instructed the jury "that in order to win a verdict it must be shown that the defendant was guilty beyond a reasonable doubt of the crime. But we would not reverse this judgment for the giving of this instruction which instructed a person to cast doubt as to the guilt of the defendant, but to himself as to the propriety of making such a verdict and not as to the propriety of the instruction which was given to the

timate anything as to what are or what are not the facts in this case." In our opinion the giving of this instruction was proper. It is true as the defendants contend that there was neither any count in the indictment nor any evidence tending to show a conspiracy "to force anyone to enter into such a contract." But it is the position of the defendants that whatever any of the witnesses were shown to have done, they did of their own free will, and that any payments of money that were made, by any of the witnesses to any of the defendants, were legitimate and proper payments for lawful objects and that there could be no complaint because some of the witnesses joined the Union and made certain payments in connection with that matter. The instruction was pertinent in connection with that contention.

The defendants complain of another instruction wherein the court instructed the jury that "no labor union has any lawful right to levy a fine against a person not belonging to that union, and any attempt to levy a fine against such person and to collect the same by inducing his men to quit his employ, is illegal, and a conspiracy to accomplish this end is a violation of the criminal law of this state." The argument made against this instruction is that there is no testimony in the record to sustain it,-- that there is no evidence of any fine or levy against anybody or of any attempt to collect such a fine, by inducing employees to quit until it was paid. Now counsel can advance such an argument is difficult to see. Counsel is either not familiar with the record or they assume that the



...the fact that the ...  
...in this case, ...  
...it is true ...  
...there was neither any ...  
...since ...  
...late ...  
...state that ...  
...done, they did ...  
...of which ...  
...the ...  
...full ...  
...of the ...  
...in ...  
...not in ...

The ...  
...was ...  
...has ...  
...regarding ...  
...against ...  
...his ...  
...is ...  
...of ...  
...is ...  
...that ...  
...body ...  
...evidence ...  
...was ...  
...is ...

court would not become so. We are not sufficiently familiar with matters of this kind to know the term which might accurately be applied to the payment of \$1,000 or \$1,200, made by the Stamos brothers but that they paid it is as clear from the record as anything can well be, and it is equally clear that they paid it for nothing except to buy their peace. The witness Abatzis, the proprietor of a restaurant in South Chicago, testified that he attended a meeting at the South Chicago Club at which the defendant Pipes was present, among others. At that meeting there was discussed the question of the witness entering into an agreement with the Waiters Union, and also the matter of hours. The witness testified that one Cosharis was at that meeting; that at the time of the trial he thought Cosharis was in Europe; that on the occasion in question the defendant Pipes asked Cosharis for \$50.00, as a "fine because he didn't walk out when we called a strike at the Paris restaurant." He testified that Cosharis replied that he didn't have any money and the defendant Pipes told him he "shouldn't get back to the restaurant business unless he pays the fine." This witness further testified that the fine was paid; that the witness gave Cosharis the money and the latter paid it to the defendant Pipes. On cross-examination he testified that it was stated at the time that the reason we "were fined was because we had violated the rules of the union." We have already referred to the testimony of the witness Billis who was required by the defendants Pipes and Boatman to pay a "fine" of \$35.00, apparently as a punishment for the remark he stated was a joke, to the effect that the previous amount which had been demanded by the defendant Pipes, as so-called initiation fee,



court would not become so. We are not sufficiently familiar  
 with matters of this kind to know the term upon which some-  
 times be applied to the payment of \$1,000 or \$1,200, made  
 by the witness in question and that that is an error  
 from the record as anything can tell us, and it is equally  
 clear that they said it for nothing except to pay their  
 debts. The witness in question, the proprietor of a restaurant  
 in South Chicago, testified that he attended a meeting at the  
 South Chicago Club at which the defendant spoke was present,  
 among others. At that meeting there was discussed the ques-  
 tion of the witness entering into an agreement with the  
 United States, and also the matter of money. The witness testified  
 that one Goetz was at that meeting, that at the time of  
 the trial he thought Goetz was in Europe; that on the  
 occasion in question the defendant spoke asked Goetz for  
 \$25,000, as a "time because he didn't like and when he called  
 a strike at the Paris restaurant." He testified that  
 Goetz replied that he didn't have any money and the defend-  
 ant spoke told him to "shoot" and went to the restaurant  
 business where he says the time. This witness further testi-  
 fied that the time was paid; that the witness saw Goetz  
 the money and the latter paid it to the defendant.  
 On cross-examination he testified that it was stated at  
 the time that the witness of "your time was because we had  
 violated the rules of the union." He says already referred  
 to the testimony of the witness in this was recalled by the  
 defendant from the witness he says a "time" of \$25,000,  
 apparently as a punishment for the reason he stated was a  
 joke, to the effect that the previous amount which had been

was a payment on which she would probably get a commission.

Finally, the defendants complain of an instruction given by the trial court, in which the jury were told "that it is illegal and unlawful for any person or persons by force or injury tending to violence, or by intimidation to compel a person against his will to do or refrain from doing any act which under the law he has a legal right to do." The objection urged to this instruction is that it ignores the conspiracy feature of the case and tells the jury that if there were any acts testified to, such as are mentioned in the instruction, the jury should find the defendants guilty, regardless of whether they were the result of a conspiracy or not. The instruction is open to no such criticism. It says nothing about the jury finding the defendants guilty. It contains a correct statement of the law on a subject which is pertinent to the issues and is fully justified in view of all the evidence before the jury.

We find no error in the record and the judgment of the Criminal Court is therefore affirmed.

JUDGMENT AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.



was a person who with his hands crossed was a witness.  
also.

Finally, the defendant's counsel at an in-  
struction given by the trial court, in which the jury  
were told "that it is illegal and unlawful to use any  
force or persons by force or injury resulting in violence,  
or by intimidation to compel a person against his will to  
do or refrain from doing any act which under the law he  
has a legal right to do." The objection urged to this  
instruction is that it ignores the conspiracy feature of  
the case and tells the jury that it must vote and give  
verdict so, even as was mentioned in the instructions.  
The jury should find the defendant guilty, regardless of  
whether they were the result of a conspiracy or not. The  
instruction is given to the jury and it is not correct  
about the jury finding the defendant guilty. It contains  
a correct statement of the law on a subject which is per-  
tinent to the issue and is fully justified in that it is  
the evidence before the jury.

We find no error in the record and the judgment  
of the District Court is therefore affirmed.

WILLIAM J. HARRIS.

WILLIAM J. HARRIS, JUDGE.

W. L. MURDOCK BROKERAGE CO.,  
a corporation,

Appellant,

v.

JAMES R. BAKER & COMPANY,

Appellee.

234 I.A. 621

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed Apr. 30, 1924.

MR. JUSTICE THOMSON delivered the opinion  
of the court.

The plaintiff, W. L. Murdock Brokerage Co., brought this suit against the defendant, James R. Baker & Company, in the Municipal Court of Chicago, seeking to recover damages for breach of a contract, entered into by the parties under date of April 30, 1919. By the terms of the contract, the defendant agreed to sell and the plaintiff agreed to buy 1,000 cases of canned salmon at \$6.00 per case, for July - August delivery. Only 310 cases were delivered under the contract. The issues were submitted to the court without a jury, resulting in a finding for the defendant. Judgment was entered accordingly, to reverse which, the plaintiff has perfected this appeal.

The parties had been dealing with one another for a number of years, the defendant sometimes selling goods "as brokers and at times on our own account," as the witness Baker testified. At no time did the defendant own a canning factory of its own. This fact was known to the plaintiff, and when the contract sued upon was entered into by the parties, it is admitted that the plaintiff knew it would be



882 A. 281

W. J. BROWN  
J. B. BROWN  
J. B. BROWN

W. J. BROWN  
J. B. BROWN  
J. B. BROWN

Original filed for 1000

W. J. BROWN

100 - 1000

The plaintiff, W. J. Brown, defendant, J. B. Brown, et al. This case was brought by the plaintiff against the defendant for the purpose of recovering damages for breach of a contract. The plaintiff alleges that the defendant agreed to sell the plaintiff a certain quantity of goods for a certain price. The plaintiff claims that the defendant failed to deliver the goods as agreed, and that the plaintiff has suffered damages as a result of this breach. The plaintiff seeks to recover the value of the goods not delivered, plus interest and costs. The defendant denies the plaintiff's allegations and claims that the plaintiff failed to pay for the goods as agreed. The defendant also claims that the plaintiff's damages are limited by the contract. The court will hear the evidence and determine the facts of the case.

The parties had been in dispute for some time. The plaintiff had been unable to obtain the goods from the defendant, and the defendant had refused to pay for the goods. The plaintiff had been forced to seek legal action to recover the goods. The court will hear the evidence and determine the facts of the case. The plaintiff has the burden of proving its case by a preponderance of the evidence. The defendant has the burden of proving its defenses. The court will render a judgment based on the evidence presented.

necessary for the defendant to get the salmon contracted for, from others, for the purpose of filling the contract.

The contract was apparently executed on a form used by the defendant. It called for 1,000 cases No. 1 Tall Standard Alaska Pink Salmon, at \$1.50 per dozen or \$6.00 per case. The contract contained a paragraph reading as follows:

"SHORT DELIVERY: Seller shall not be liable for short, late or non-delivery caused by destruction of cannery, shipwreck, floods, strikes, short pack or other unavoidable cause; in which event after shortage is discovered, pro rata delivery shall be made by Seller and accepted by Buyer. Buyer shall, in case of destruction of his place of business by fire or the elements have the right to cancel all or part of this contract by giving Seller written notice within a reasonable time."

The contract was executed by the plaintiff as "Buyer" and by the defendant as "Seller", and below the signatures of the two parties was a third line on which there appeared no signature and at the end of this line, there was printed the word "Broker".

It is shown by evidence in the record that salmon which are used for canning purposes are caught in fish traps, located on the sounds and near the mouths of rivers along the upper Pacific coast of North America. The extent of the catch in any year depends entirely upon the number of fish that come to the traps of their own volition. They may not be attracted into the traps by any artificial means. The "runs" of salmon resulting in the catches which are available for canning purposes, occur annually. As a rule the run begins early in July and ends in September. It some-



...the ... of the ...

The ... of the ...

...the ... of the ...

The ... of the ...

It is ... of the ...

times happens that the run in a given year may be below normal and there then results what is known as a "short pack." Although there may be a normal run of salmon, generally, there may be a small run at given points along the coast, thus yielding a comparatively small number of salmon for canning purposes to such canneries as are located at those points, depending for their supply, on the catch made in contiguous waters. It was shown by the evidence that the term "short pack" as used in the trade and in the contract here sued upon, means a shortage at a particular cannery, and not in the total production for the season, in the industry as a whole. The evidence also was to the effect that "It is not the practice among the trade for a broker who sells for particular canneries or packers, in the event of its not getting the full amount of the order, to go into the open market and supply the difference."

The defendant interposed two general defenses to the plaintiff's suit. It was the defendant's contention, first, that it was an agent and not the principal; and second, that if held to be the principal, it had entirely complied with the terms of the contract, because the cannery supplying the salmon for this contract suffered a "short pack" in the 1919 season, which made it possible to deliver only 31 per cent and that deliveries to that extent were made to the plaintiff under this contract.

There seems to be a confusion of terms in the arguments presented by the respective parties, as we read them in the briefs. One may have executed a contract, not as an agent for another but as a principal, and yet he may be a





a broker merely, and his liability on the contract measured by his obligations as a broker. In our opinion, from all the evidence in this record, the defendant did not execute the contract sued upon as the agent for a principal. In case of a breach, the plaintiff could sue and hold liable, under the terms of the contract, nobody but the defendant. But it is also true that the defendant was a broker and was known to be such by the plaintiff. In other words, the defendant was the principal in a brokerage contract.

Mr. Murdoch of the plaintiff company testified that he did not know the defendant was acting as a broker in this transaction. We have difficulty in appreciating that such could be the case. It is admitted that the plaintiff knew all the time that the defendant was not a canner and that it owned no cannery but would, of necessity, fill this contract by having shipments made by parties who were canners, to the plaintiff. A broker is a middleman, who, for a commission based on the value of the transaction, negotiates the sale of commodities for others. That is exactly what the defendant was and such was precisely the nature of the transaction involved in this case, as shown by the evidence.

Murdoch testified that he probably signed the contract sued upon on May 2. It was apparently signed by the defendant on April 30, in Chicago, where defendant was located, and then sent to the plaintiff, the latter being located at Birmingham, Alabama. The defendant wrote the plaintiff a letter under date of April 26, which Murdoch said he had before him at and before the time he signed the contract. In this letter



a further review, and the liability of the witness to be  
by the obligation of a lawyer. In our opinion, from all  
the evidence in this regard, the defendant and his counsel  
the contract made upon the basis of a criminal. In case  
of a breach, the plaintiff would not be able to recover,  
the terms of the contract, which are the subject, and it is  
also true that the defendant was a party to the injury to be  
much of the liability. In this regard, the defendant was the  
principal in a fraudulent contract.

My recollection of the plaintiff's property consisted that  
he did not know the defendant was acting as a broker in this  
transaction. He also testified in questioning that when  
made on the date. It is stated that the plaintiff was not  
the time that the defendant was not a broker and that it would  
be necessary that would, of necessity, this was contrary to the  
law. The defendant by giving the plaintiff the money, in the plaintiff  
a broker is a defendant, and, for a defendant, there is no  
value of the transaction, regardless of the sale of commodities  
for value. That is exactly what the defendant was and was  
and precisely the nature of the transaction involved in this  
case, as shown by the evidence.

My recollection is that the plaintiff signed the note  
that was made on the 1st. It was apparently signed by the  
defendant on the 1st, in Chicago, which defendant was located,  
and then sent to the plaintiff, the latter being located at  
Chicago, Illinois. The plaintiff wrote the plaintiff a letter  
under date of April 1st, which letter said he had before him  
at and before the time he signed the contract. In this regard

the defendant advised the plaintiff, "We are selling Salmon today firm \* \* \* Pinks \$1.50 \* \* \* July-August shipment \* \* \* your brokerage on all sales for shipment from the coast unless we advise you to the contrary \* \* \* will be 2%. Our packers have tightened on us; the most liberal today only pay us 3½% - most of them limit us to 3½%." Under date of May 1, the defendant sent the plaintiff a telegram which was doubtless received, and which Murdoch admits was probably received, before he signed the contract, and in this telegram the defendant advised the plaintiff, among other things, "Pack will be short. \* \* \* Offering strong reliable packer. Your brokerage two per cent."

Apparently the plaintiff was buying the salmon which was the subject-matter involved in this contract, for certain customers. In the course of his testimony, Murdoch stated that he "was representing Mr. Baker (the Baker of the defendant company) as a sub-broker." That could hardly have been on any theory except that Baker or his company had made the contract in question, in the capacity of a broker. The testimony just referred to was given in connection with an explanation of the witness concerning the letter he had written the defendant in October, 1918, after the parties had had a controversy over the subject-matter of their contract. In that letter Murdoch advised the defendant that,

"The trouble with this deal is that relying on the July-August shipment clause, buyers have sold the salmon and are being called on to make delivery, and then, too, there is a feeling in this section which finds expression through the Southern Wholesale Grocers Association that the Coast interests are pursuing methods which are unfair to the jobbers and consumers and they are inclined to stand on any legal rights they may have. The Murdoch Brokerage Company, in their capacity as sub-brokers representing you, have presented to contract





buyers your correspondence but the buyers do not accept your view of the matter and are advised that they have substantial rights in these contracts. They also feel that behind these contracts is a strong concern who is no friend of theirs and who can well afford to carry out these contracts, or, if liable, pay the damages sustained. I do not doubt that your records are clear in the matter, as stated in your letter, but the contract which was signed by the buyer and by you, as seller does not show that you represented any principal, and the buyers thought, and I may be pardoned for saying it, that they were dealing with you direct as seller and not as broker."

In the light of the correspondence referred to, and notwithstanding the position taken by the plaintiff, in the last letter, we are of the opinion that the plaintiff must have known, at the time the contract was executed, that the defendant was contracting as a broker. It was known not to be a canner or packer itself. It refers in its correspondence to "our packers," and to the fact that the latter were limiting it to a brokerage commission of  $3\frac{1}{2}\%$  and that plaintiff's brokerage commission was to be 2%. As an apparent inducement to the plaintiff's execution of the contract, the defendant in its telegram of May 1, said it was "offering strong reliable packer."

But we are further of the opinion, that whether defendant's position was that of a broker only or that of a principal seller, there is no liability on its part, to the plaintiff, in the suit brought for the breach of the contract made, in view of the paragraph entitled "Short Delivery" which has already been quoted. That paragraph must be given a logical interpretation, such as will be in harmony with all the other provisions of the contract. It was apparently put in the con-



[illegible]

Is the limit of  $\epsilon$ -maximizers unique?

and notwithstanding the position taken by the Committee  
in the last report, we are of the opinion that the same  
will now have been given, at the time the report was prepared,  
that the relations are developing as a whole. It was known  
not to be a matter of great doubt. It is clear in the  
pastures of "the country," and in the fact that the  
were living in a system of relations of the kind that  
"the country" is developing relations and in the fact that the  
importance to the Committee's position in the country, the  
system in the relations of the fact is now developing  
the relations of the country.

[illegible]

tract for the mutual protection of both parties. The buyer, in this paragraph, was given the right to cancel all or part of the contract upon reasonable notice, in case its place of business was destroyed by fire. In case of a "short pack," the buyer was assured, under the terms of the contract, a pro rata delivery based on whatever the pack turned out to be, instead of being shut out entirely by reason of the making of full deliveries on prior contracts.

On the other hand, as a protection to the defendant, it was provided that the latter was not to be liable for either short, late or non-delivery caused by "destruction of the cannery." That of course could not refer to the defendant's cannery, for it had none and plaintiff admits knowledge of the fact that it had none. It could only refer to the cannery from which the salmon, contracted for, was to come. This paragraph further provided that the seller was not to be liable for short, late or non-delivery caused by "short pack." The evidence in the record is to the effect that this term does not mean in the trade, a shortage in the total production of the entire industry, but that it means a shortage at a particular cannery.

Much would seem from the evidence in the record, to have been the interpretation placed on the meaning of this paragraph, by the parties themselves. As to some of the testimony offered on this question, it was the plaintiff's contention that it was inadmissible. In our opinion it was all admissible as bearing directly on the question of the





interpretation placed by the parties on their mutual obligations under the contract, as they had executed it. Whenever it may be said that any ambiguity exists in language used in a contract, courts will endeavor to place themselves in the position of the parties, and where they, by their conduct or correspondence, either contemporaneous with the execution of the contract or after its execution and in connection with the carrying out of its terms, are shown to have given the contract a certain construction, the courts will adopt it. Any evidence showing or tending to show such a construction of the terms and provisions of a contract by the parties is admissible. The W. M. Purcell Co. v. Sage, 200 Ill. 342; Walker v. Illinois Central R. R. Co., 215 Ill. 610; McLean County Coal Co. v. City of Bloomington, 234 Ill. 90. Moreover, where one of the parties is shown to have placed a certain construction on a contract, to the knowledge of the other, and without protest on the part of the latter, the construction so placed upon it, will prevail. Walker v. Ill. Cen. R.R. Co., *supra*; Street v. Chicago Wharfing and Storage Co. 157 Ill. 605. Even before the contract was entered into, and, as already stated, as an apparent inducement to the plaintiff's entering into it, the defendant said they were "offering strong reliable packer" and in their letter of April 26, they referred to "our packers." And as early as the telegram of May 1, the plaintiffs were advised that "Pack will be short." Under date of June 17, the defendant advised the plaintiff that the salmon would be shipped "by J. L. Bailey & Co. or Alaska Herring & Sardine Co., Seattle." The plaintiff was thus advised as to who "our packers" were. Murdoch testified he understood from this letter that the defendant had made arrange-



[illegible]

ments with or made a contract with these people. Under date of August 18, the defendant advised the plaintiff that "our packers and all others decided that they will not make any deliveries until the pack is finished, so if it will be necessary to pro-rate, every buyer will get a square deal." This was in reply to a communication from the plaintiff to the defendant under date of August 18. We do not find that letter in the record but apparently it was an inquiry as to why deliveries were not coming forward.

If the plaintiff was interpreting the contract to mean that "short pack" referred to a shortage in the industry as a whole and not a shortage in the pack at a given cannery and therefore that there would be no occasion to pro-rate even if defendant's packers were short in their pack, provided the goods contracted for were available in the general market, its position should have been made known for it must have realized that such was not the interpretation which the defendant was placing on the contract. The plaintiff not only did not do this but it intimated the contrary, for, by its letter of August 23, referring to the contract involved, which the plaintiff says "you" (meaning defendant) signed, the plaintiff says, "we do not see how a packer who put out such a contract can withhold his shipments until his entire pack is made. He has definitely and positively agreed to make shipments during the months of July and August, and our buyers will expect these shipments to be made on or before August 31st." This letter shows clearly that at that time the plaintiff was considering the defendant's liability under the contract, as that of a broker (for plaintiff admits knowledge that



It was not until the latter part of the year 1914 that the plaintiff in the instant case was notified by the defendant that the latter was in possession of the same. The plaintiff then brought this action to recover the same.

[illegible]

defendant was not, itself, a packer) and there is nothing in it to indicate that the plaintiff's interpretation of the term "Short pack" referred to a shortage in the industry as a whole. It merely contended that where a packer had sold for July-August delivery, he was bound to deliver then, without waiting to see if he was going to have a short pack.

Murdoch testified that he (apparently referring to the plaintiff) received a brokerage commission of  $3\frac{1}{2}\%$  on the 310 cases of Salmon delivered under this contract. It is denied in the briefs that plaintiff was a sub-broker under defendant, on this transaction but that is how plaintiff is referred to in Murdoch's letter of October 11, to which reference has already been made, and it is to be noted that in the letter of April 26, defendant advised plaintiff that "our (defendant's) packers will only pay a brokerage commission of  $3\frac{1}{2}\%$ " and further, defendant says in this letter that "your (plaintiff's) brokerage" will be  $3\%$ , which is the commission Murdoch testified he received on the number of cases delivered under this contract. As to the letter of October 11, counsel for plaintiff states in the brief filed in this court that it "manifestly" deals with contracts other than the one involved here. No such suggestion was made when the defendant offered it in evidence in the trial court.

It is the plaintiff's contention that when the defendant wrote, in the course of the correspondence between the parties, that "We are as anxious as you to get the goods forwarded and full deliveries made, but our principals have to consider others besides ourselves," they were taking a position which is inconsistent with the one now contended





for and one which supports plaintiff's position. We are unable to agree with that contention. The defendant is merely showing by that expression, that it is anxious to see all goods sold under its contracts, delivered, but that its packers have to treat all contracts alike and there is nothing in what defendant said, as quoted, to indicate that it considered itself bound to deliver to the extent of 100%, under the contract, without regard to the question of a short pack.

The contract between these parties provided that the defendant was not to be liable for short, late or non-delivery, caused by short pack, in which event pro rata delivery would be made by the defendant and accepted by the plaintiff. It is admitted by the plaintiff that the evidence was to the effect that the term "short pack" in such contracts as this, referred to a particular cannery and not to the aggregate of fish of any particular variety, packed by all canners during the season. In its correspondence with plaintiff, both before and after the contract was entered into, the defendant repeatedly referred to "our packers" and to the brokerage commission they were allowing defendant, and early in the correspondence defendant designated two canners or packers who would ship the salmon contracted for. It is not denied that these packers suffered a short pack in 1919 and that the deliveries pro-rated on their contracts amounted to 31%. The goods received on this contract came through a concern referred to as Wakefield & Co., which, the evidence shows, was a selling or shipping agency, representing the packers above referred





to, and the goods received were shown to have been from the canneries named by the defendant and to which the defendant had referred, in its correspondence, as "our packers".

Payments on these deliveries had not been made to defendant but on drafts drawn on the plaintiff by the packer's shipping agents, Wakefield & Co.

This being the situation, as shown by the evidence, and giving to the terms of the contract of the parties, the meaning supported by the evidence, we are of the opinion that the defendant is not liable in damages by reason of the short delivery of the goods contracted for, which was due to the short pack experienced by the defendant's packers.

For the reasons stated the judgment of the Municipal Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.



and the House rejected the bill to amend the  
provisions of the National Bank Act relating to the  
national currency, in the Senate, in the House,

provisions of the National Bank Act relating to the  
national currency, in the Senate, in the House,

provisions of the National Bank Act relating to the

provisions of the National Bank Act relating to the  
national currency, in the Senate, in the House,  
provisions of the National Bank Act relating to the  
national currency, in the Senate, in the House,  
provisions of the National Bank Act relating to the  
national currency, in the Senate, in the House,  
provisions of the National Bank Act relating to the  
national currency, in the Senate, in the House,

provisions of the National Bank Act relating to the  
national currency, in the Senate, in the House,

provisions of the National Bank Act relating to the

provisions of the National Bank Act relating to the

ISRAEL GELDER,

Appellee,

v.

H. PIEHL TRANSFER COMPANY,  
a corp.,

Appellant.

234 I.A. 621

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

Opinion filed Apr. 30, 1924.

MR. JUSTICE THOMSON delivered the opinion of the court.

The plaintiff Gelder brought this action against the defendant, H. Piehl Transfer Company, to recover damages alleged to have been the result of injuries received by him when he was struck and knocked down by a Ford delivery truck, belonging to the defendant, and being operated by one of its servants, the contention of the plaintiff being that he was in the exercise of reasonable care for his own safety at the time, but that the defendant's servant was negligent in operating the truck. The issues were submitted to a jury and a verdict was returned in favor of the plaintiff, fixing his damages at the sum of \$2,000. Judgment was entered against the defendant for that amount, to reverse which it has perfected this appeal.

The occurrence which is involved in this case took place in the east and west alley, running, between Clark street and Dearborn street, one half block north of Randolph street in the City of Chicago. The plaintiff was employed as a stage carpenter at the Garrick Theatre. The north wall of the Garrick Theatre building, in which the theatre is located, is at the





south side of this alley and the stage entrance opens out onto the alley. On the opposite side of the alley, across from the stage entrance and extending for some hundred feet or more east and west, there is a loading platform, the level of which is two or three feet above the level of the alley. The southern side of this platform is flush with the north side of the alley and the platform extends back fifteen or twenty feet to the walls of the buildings with which the platform is connected. The plaintiff received the injuries complained of about four o'clock in the afternoon on June 16, 1920. At that time there was a two horse American Express Company truck standing along side of the loading platform above referred to, with the horses to the west and the tail-gate of the truck located a little west of a point opposite the Garrick Theatre stage entrance. A number of the employees of the theatre were on and about the loading platform, some of them sitting on the platform along its southern edge where it bordered on the alley, and a little to the east of the Express Company truck. Others were standing up on the platform and apparently they were passing the time out there, pending the completion of one of the acts of the play which was going on in the theatre, it being a matinee afternoon. The plaintiff was not working at the theatre on the day in question but had procured someone else to take his place for the day, and he had been making some repairs at his home, and being in need of some hardware, he had come down to the place of business of Lusk, White & Coolidge, hardware merchants, and had purchased the articles he desired. This firm was located across the alley from the Garrick Theatre, bordering at its rear upon the loading platform above referred to. After the plaintiff had made his purchase he came out onto that platform through the



...the side of this alley and the stage entrance opens out into  
the alley. On the opposite side of the alley, across from  
the stage entrance and extending the same distance, there is a  
east and west, there is a loading platform, the level of which  
is two or three feet above the level of the alley. The south  
end side of this platform is flush with the north side of the  
alley and the platform extends back fifteen or twenty feet to  
the wall of the building with which the platform is connected.  
The plaintiff received the injured complaint of about four  
o'clock in the afternoon of June 12, 1907. At that time there  
was a heavy rainstorm and the plaintiff was standing about  
side of the loading platform above referred to, when the engine  
to the west and the tail-end of the train passed a light  
west of a point opposite the Union Pacific stage entrance.  
A number of the employees of the theater were on the platform  
the loading platform, some of them sitting on the platform  
along the southern side where it bordered on the alley, and  
a light to the east of the engine (Union Pacific) there  
were standing up on the platform and apparently they were  
watching the time and there, pending the completion of the  
of the side of the play which was going on in the theater,  
it being a routine rehearsal. The plaintiff was not working  
at the theater on the day in question and had returned home  
one side to take his lunch for the day, and he had been wait-  
ing some repairs at his home, and being in need of some  
business, he had come down to the place of business of his  
where a collision, between the engine, and had purchased the  
tickets for himself. This time we inserted within the alley  
from the Union Pacific, southward of the west side of the  
loading platform above referred to. After the plaintiff was

rear door of the premises of Lusky, White & Coolidge. How long he remained on and about the platform does not appear. The evidence shows that in anticipation of the early closing of one of the acts, in connection with the matinee at the Garrick Theatre, someone at the stage entrance had signalled the men out in the alley, who were stage hands<sup>and</sup> scene shifters and there was a general movement on their part toward the stage entrance of the theatre. The plaintiff, with the others, started across the alley in a southerly direction and a little to the east of the American Express Company truck, and apparently he was in advance of the others. The Ford delivery truck belonging to the defendant approached from the west, between the south side of the American Express Company truck and the Garrick Theatre wall, and when it got to a point a few feet east of the east end of the Express Company truck, it struck the plaintiff and knocked him down. Apparently, no bones were broken but he was severely bruised and he remained unconscious for about twenty minutes. The chief injury he experienced was to the head, where there was a laceration and where he received a blow which resulted in what the doctors pronounced a concussion of the brain. Up to the time of the accident the plaintiff had been in good health, and weighed between 180 and 185 pounds. This was the first injury he had ever experienced. After several weeks he returned to his employment but he continued to experience considerable pain in one of his limbs which had been severely bruised, and this gave him some difficulty in walking. He also had very severe headaches and a persistent feeling of great pressure in his head, which



[illegible]

not only bothered him during the day but also at night. In six months his weight was reduced to 138 pounds.

The record contains the testimony of a number of witnesses who had known the plaintiff for different periods of time, ranging from a few years to as much as twenty years, all of whom testified to the effect that he had always appeared to be in good health and had always been a man of genial disposition and a happy temperament, and one with whom it was always easy to get along, but that a few weeks after receiving the injuries in question, he had become, morose, suspicious, and complaining; that whereas formerly, his associates at the theatre had always worked along with him pleasantly, after he returned to his work, the reverse was the case, and he would curse and swear at them at slight provocation and at times without any provocation; that he would habitually turn a conversation to the subject of his injuries and express his wonder of the fact that although he had never done anything to harm the driver of this truck, he should be run over and injured as he had been. The evidence further is that he had always been a genial man about his home. His family consisted of his wife, and a married son and his wife. The age of the plaintiff at the time he received his injuries was 56 years. After receiving the injuries complained of, he repeatedly threatened the lives of members of his family. His condition came to such that he consulted a specialist in brain and nervous diseases in December, 1920, about six months after the injuries were received. This doctor testified as to the conditions he found upon his examination of the plaintiff at that time, and he stated that the conclusion he reached



IN THE MATTER OF THE ESTATE OF JAMES EARL RAY, JR., DECEASED  
 WILLIAM H. RAY, JR., Administrator

The record contains the testimony of a number of witnesses who had known the Plaintiff for different periods of time, ranging from a few years to as much as twenty years, all of whom testified to the effect that he had always appeared to be in good health and had always been a man of good disposition and a happy temperament, and that with him it was always easy to get along, and that a few weeks after receiving the injuries in question, he had become, rather, suspicious, and complaining; that within twenty days after the Plaintiff had always appeared about the same as usual, after he returned to his work, the injuries had disappeared, and he would never again be injured at work, and he would never again be injured at home without any provocation, and he would habitually turn a conversation to the subject of his injuries and express his wonder at the fact that although he had never done anything to hurt the driver on that night, he should be hurt and injured as he was now. The witness testified that he had always been a quiet and peaceable man, his family consisted of his wife, and a married son and his wife. The age of the Plaintiff at the time he received his injuries was 33 years. After receiving the injuries complained of, he reportedly discontinued the lines of work of his family. His condition came to such that he required a specialist in brain and nervous diseases in treatment, that about six months after the injuries were received, the Plaintiff testified as to the condition he found upon his examination of the Plaintiff's head, and he stated that the condition he found

was that the plaintiff was afflicted with a form of insanity, and he further stated that it was his opinion that it had resulted from a trauma, or injury to the head. This witness testified that he recommended at that time that the plaintiff be given a distinct change of climate and environment. Accordingly, the plaintiff went to California and at the time of the trial of this case, he and his wife were still making their home in that state. The doctor last referred to testified further that he had made another rather superficial examination of the plaintiff a few days before the trial and at that time he did not show any particular signs of insanity although he still showed some nervous disturbances and that, in his opinion, he was greatly improved over his condition in 1920, at the time he left Chicago.

As to this nervous and mental condition of which the plaintiff complained, claiming it to have been one of the results of the injuries received at the time he was knocked down by the defendant's truck, another doctor testified in behalf of the defendant, to the general effect that in his opinion the conditions complained of by the plaintiff did not constitute traumatic insanity nor were they connected with any injury; that in traumatic insanity there is no lucid or clear period between the time of the traumatic injury and that of the mental abnormality; that the lack of cheerfulness and the presence of depression or some such similar state of mind, never results from trauma, and that in the case of traumatic insanity the patients do not recover, but remain in the confused state which that form of insanity produces, until they die.



[illegible]

14 the country which was at that time of its  
economic growth the system of not having the  
land, even under the system, and then in the case of  
and the system of taxation to have been similar to that  
that at the same time, that the fact of ownership  
which would be the fact of the ownership being the  
fact; then in practice, however, there is no limit to  
the ownership, namely, not only the ownership with any  
the ownership of the individual and the ownership  
of the system, to the general effect in the system  
down by the system's fact, namely, the fact of the  
evidence of the system received as the fact in the system  
the ownership, claiming it as fact, and as the fact  
as to the system and the ownership of the system

There were eleven occurrence witnesses for the plaintiff. Those of them who expressed an opinion as to the speed of the defendant's truck, at the time the plaintiff was struck, gave it at speeds varying from 15 to 30 miles an hour. The evidence of the driver of the truck and one or two other witnesses for the defendant, who expressed an opinion as to the speed, was to the effect that it was much less than that.

One of the errors urged by the defendant in support of this appeal involves the giving of an instruction by the trial court, in the words of the statute covering the matter of the speed of motor vehicles, to the effect that no person shall drive such a vehicle at a speed greater than is reasonable and proper and that if the rate of speed of any such vehicle operated upon a public highway, where the same passes through a closely built up business portion of any incorporated city, town or village, exceeds 10 miles an hour, such rate of speed shall be prima facie evidence that the person operating such vehicle is running at a speed that is greater than is reasonable and proper, having regard to the traffic and use of the way. The contention is: first, that the part of the instruction dealing with prima facie evidence would be misleading to the jury and, second, that the statute on which the instruction was based, had been repealed and was not in effect after December 31, 1919, which was prior to the occurrence involved in this case. In our opinion it may not reasonably be said that the giving of such an instruction as this would mislead a jury, by the reference it makes to prima facie evidence. The second objection urged to the instruction is also





untenable, in our opinion. The motor vehicle law approved in June, 1919, and effective as of January 1, 1920, divides motor vehicles into two divisions, the first consisting of those designed and used for the carrying of not more than seven passengers, and the second those designed and used for carrying more than seven passengers and also those designed and used for carrying freight. Thus the vehicle involved in the case at bar came within the second division. Section 23 of the new Act, Ch. 95a, Sec. 23, contains provisions with respect to the speed of motor vehicles included within the first division above referred to, and this section is apparently a reenactment of the provisions of the former motor vehicle law, as to speed, which are referred to in the instruction complained of. The following section of the new motor vehicle law which went into effect January 1, 1920, contains provisions regarding the speed of vehicles of the second division, as above defined. It is the contention of the defendant that the provisions contained in this section and which therefore governed the operation of this truck do not include the provisions of the previous section affecting vehicles of the first division or passenger cars, but that the provisions of the section affecting vehicles of the second division or trucks, merely provide for various maximum speeds, which are specified as to trucks of various gross weights. We are of the opinion, however, that the provisions as to speed, which the new act applies to motor vehicles of the first division, are to be considered as also applied, by the provisions of the next section, to vehicles of the second division, for the first paragraph of section 23 of the Act relating to speed of vehicles of the second division, is to the effect that the speed of all such vehicles shall always be reasonable and safe and shall "be govern





ed, as near as may be, by the general requirements of section 22 of this act," which is the section relating to the speed of vehicles of the first division, and this section then goes on to say, "but such speed shall not exceed the following rates," following which are several paragraphs giving various permissible maximum speeds, as applying to trucks of various weights. We are, therefore, of the opinion that the instruction complained of was proper.

Defendant further complains of an instruction given by the trial court to the following effect:

"If, under the evidence and instructions, of the Court, you find the defendant guilty and that the plaintiff has sustained damages by reason of physical pain and suffering undergone by him as a natural, direct and proximate result of an injury received by him in the manner and as charged in the declaration or some count thereof, then to enable the jury to estimate the amount of such damages, (if any) as caused by physical pain and suffering, it is not necessary that any witness should have expressed an opinion as to the amount of such damages, but the jurors may make such estimate from the facts and circumstances proved by the evidence considering them in connection with their knowledge, observation and experience in the affairs of life."

The contention is that the amount of damages, "caused by physical pain and suffering" may be taken to include doctor's bills and loss of time, as well as strict compensation for pain and suffering, and that, therefore, it was error to say that in estimating such damages it is not necessary that any witnesses should have expressed an opinion as to their amount, but that the jury might make an estimate from the facts and circumstances proved by the evidence, considering them in connection with their knowledge and experience in the affairs of life. We are of the opinion that a jury would not so understand this instruction, but that they would con-





sider it as referring merely to those damages which they might award, if any, because of the physical pain and suffering experienced by the plaintiff, as shown by the evidence.

The defendant also complains of another instruction given by the trial court, on the question of damages, reading as follows:

"The Court instructs the jury that if you find for the plaintiff you will be required to determine the amount of his damages. In determining the amount of damages the plaintiff is entitled to recover in this case, if any, the jury have a right to, and they should, take into consideration all the facts and circumstances attending the plaintiff's injury as proved by the evidence before them; the nature and extent of plaintiff's physical injuries, if any, so far as the same are shown by the evidence; his suffering in body and mind, if any, resulting from such physical injuries, and loss of health, if any, as the jury may believe, from the evidence before them in this case, he has sustained by reason of such injuries; loss of time, if any; and may find for him such sum as in the judgment of the jury under the evidence and instructions of the Court in this case, will be a fair compensation for the injuries he has sustained, if any, so far as such damages and injuries, if any, are claimed and alleged in the declaration and proven by a preponderance of the evidence."

As to this instruction the contention is that so far as it warranted the awarding of damages for the plaintiff's loss of time, the instruction did not limit the awarding of such damages to such as might be shown to have been sustained by reason of the injuries suffered by the plaintiff, and also that the instruction failed to make a similar limitation as to damages which might be awarded for the plaintiff's physical injuries. The instruction might have been drawn more accurately, but we do not feel that the giving of it amounted to such error as would warrant this court in disturbing the





judgment. The instruction tells the jury that if they have occasion to consider the question of damages, they have a right to, and should, take into consideration the extent of the injuries as shown by the evidence, such suffering as the evidence showed the plaintiff experienced "resulting from such physical injuries" and the plaintiff's loss of health, if any, as shown by the evidence, and if the jury believed such had been experienced "by reason of such injuries," and immediately after that phrase, the instruction includes the element of loss of time. The jury could not reasonably understand this instruction as warranting the awarding of any damages, for either bodily suffering, loss of health or loss of time, unless they were of the opinion, from all the evidence, that they were the result of the injuries complained of. It should further be said that the trial court gave an instruction at the request of the defendant on the same subject, and there the jury were clearly told that before the plaintiff could recover, with respect to the ailments claimed, the law required him to show by a preponderance of the evidence, not only that they existed but also that they were "the result of the accident in question, and did not proceed or arise from any other cause."

There was considerable evidence introduced to the effect that the alley in question was what is known as a one way alley and that the traffic always moved through this alley in a westerly direction, entering at Dearborn street and going out at Clark street. This evidence was admitted over objection of counsel for the defendant and its admission is assigned as error. It is contended that the fact that the



judgment. The investigation tells me that it may have  
occurred to consider the possibility of damage, they have a  
right to, and should, make their own investigation as to what is the  
injuries as shown by the evidence, and nothing is the  
evidence showed the plaintiff experienced "severe" injuries, it  
physical injuries" and the defendant's loss of health, it  
any, and shown by the evidence, and it is my belief  
which had been experienced "by reason of such injuries," and  
immediately after that point, the investigation reveals the  
element of loss of time. The jury could not reasonably where-  
stand this investigation as revealing the evidence it was the  
evidence, the plaintiff bodily suffering, loss of health or loss  
of time, which they were of the evidence, that the wife  
dame, that they were the result of the injuries complained of.  
It seems further to be said that the wife could have an injury  
often at the request of the defendant on the same subject,  
and there the jury were clearly told that before the plain-  
tiff could recover, with respect to the alleged injury, the  
investigation is to be by a preponderance of the evidence,  
not only that they existed but also that they were "the  
result of the accident in question, and did not proceed as a result  
from any other cause."

There was considerable evidence introduced in the  
evidence that the injury in question was what is known as a one  
way injury and that the plaintiff always moved through this injury  
in a somewhat different manner, showing of constant stress and  
going out at least twice. This evidence was admitted over  
objection at counsel for the defendant and its admission is  
evidence that the jury was not misled.

defendant's truck was going one way rather than another cannot be urged as any evidence of negligence, unless there is such a rule of traffic, based upon an ordinance, and on that theory the evidence was inadmissible, because no ordinance was pleaded nor was any evidence offered relating to an ordinance. The question of the admissibility of this evidence was first raised when the plaintiff's first witness was testifying. That witness was asked if he knew whether or not the alley in which this accident took place was a one way alley. Objection was made solely on the ground that the question was immaterial. We are of the opinion that such an objection was properly overruled. Traffic in an alley may come to be all one way without the interposition of an ordinance and solely as a result of either custom or a traffic regulation, and, therefore, it might not be necessary to plead some legislation on the subject before evidence upon it would become competent. All the witnesses who testified on the subject stated that it had always been a one way alley with traffic moving westward. The plaintiff was one of those who testified to that effect.

It is contended that no knowledge that this was a one way alley was brought home to the defendant's servant who was driving the truck. We are of the opinion that the record shows the contrary. From the testimony of witnesses submitted by the defendant itself, it appears that the defendant's truck was driven into the alley from the east and that when it reached a point just west of the American Express Company's truck, it was backed up to the loading platform at an angle, with the front of the truck in a southwesterly direction and with only the right rear wheel against the edge of the plat-



defendant's truck was going east when it struck the  
he urged on my evidence of negligence, which I believe  
a rule of law, based upon an assumption, and on that basis  
the evidence was inadmissible, because no evidence was shown  
now was any evidence offered relating to the defendant. The  
question of the admissibility of this evidence was first  
raised when the plaintiff's first witness was examined.  
That witness was asked if he knew whether or not the driver  
of the truck was a man or a woman. He said he did not know.  
Then was asked solely on the ground that the question was  
irrelevant. He said that he did not know on the question  
was properly overruled. That is in an effort to keep the  
all was without the introduction of it in evidence was  
solely as a result of other persons in a similar situation,  
and, therefore, it might not be necessary to call him again.  
Based on the subject before evidence was it would become  
consistent. All the witnesses who testified on the subject  
stated that it had always been a man who drove the truck  
moving westward. The plaintiff was not to prove the truck  
driven by defendant.

It is contended that the defendant's truck was  
a one way alley was brought into the defendant's witness  
who was driving the truck. He said that he knew that the  
truck was the plaintiff's, from the evidence of witnesses  
submitted by the defendant. It is further stated that the defendant's  
truck was driven into the alley from the east and that  
when it reached a point just on the Avenue between  
Street, it was backed up to the building located on the west  
side of the street and was parked in a position which prevented  
it from being driven out of the alley.

form, which would put it in a position to get out of the alley, to the west, upon leaving. There was evidence by several witnesses to the effect that there was a business concern which dealt in safes bordering on this alley near the west end, and that on the afternoon in question there was a large truck in the alley at that point, from which safes were being unloaded and that the alley was practically blocked by that truck. That the servant of the defendant knew of the fact, that the traffic in this alley customarily moved from east to west, was indicated by his own testimony to the effect that when he was ready to leave, he noticed that the west end of the alley was blocked by the truck above referred to, and that he left his vehicle and walked over to the truck from which the safes were being unloaded, and asked the man in charge how long he was going to keep the alley blocked, and that he was told that it would be an hour or an hour and a half, and that inasmuch as the east end of the alley was not blocked "I thought I would go out the east way." The testimony of other witnesses was to the same effect, and one of these witnesses, in describing how the defendant's servant started out of the alley, stated that he "turned his truck around in the alley." We are of the opinion that the court did not err in admitting this testimony.

In connection with the subject of the traffic in the alley in question, the defendant submitted an instruction which the court refused to give in the form submitted, but which was modified by the court and given as so modified. By the instruction, as submitted by the defendant, the jury was told that "the driver of an automobile in question was lawfully entitled to drive the automobile through the alley in question



There, which would be in a position to get out of the alley, to the west, upon leaving. There was evidence by several witnesses to the effect that there was a doorway somewhere which dealt in either hanging on the left side of the west end, and that in the doorway in question there was a large truck in the alley at that time, from which some were being unloaded and that the alley was practically blocked by that truck. That the removal of the defendant from the road, that the handling in this alley was completely covered from east to west, was indicated by his own testimony to the effect that when he was ready to leave, he noticed that the west end of the alley was blocked by the truck above referred to, and that the left side vehicle was loaded over to the truck from which the notes were being unloaded, and asked the man in charge how long he was going to keep the alley blocked, and that he was told that it would be an hour or so long and a half, and that he remained on the west end of the alley and was placed "I thought I would go out the other way." The reason why all other witnesses were so the same effect, and one of them witnesses, in describing for the defendant's attorney stated out of the alley, stated that he "saw the truck around in the alley." He did not know whether the truck was out in the alley or in the alley.

In connection with the subject of the truck in the alley in question, the defendant testified on examination when the court asked to give in the form exhibited, but which was modified by the court and given as so modified. By the prosecution, as submitted by the defendant, the fact was that the driver of an automobile in question was loaded

in either an easterly or a westerly direction. He was not required to drive in a westerly direction only and you are not at liberty to find the defendant guilty of negligence, because the driver of the automobile chose to drive east in said alley." The court modified this instruction by adding the words "in a manner which, under the circumstances, was reasonable and proper, having regard to the traffic and the use of the way," after the words "westerly direction" at the end of the first sentence, and also by inserting the word "solely" after the word "negligence" and before the word "because" in the last sentence. For the reasons we have referred to, in connection with what has been said regarding the evidence submitted on the question of the traffic in this alley, we are of the opinion that the trial court did not err in modifying this instruction and giving it to the jury as so modified.

The defendant makes the further contention that the plaintiff was guilty of contributory negligence as a matter of law. In our opinion that contention is not tenable. The plaintiff testified that he stepped off the loading platform on the north side of the alley and took two or three steps toward the stage entrance of the Garrick Theatre, when he was struck; that he looked east and west and saw nothing coming and that suddenly he was struck and that he knew nothing of what followed. Another witness testified that as the plaintiff stepped off the platform he was looking west. One of the witnesses for the plaintiff was a Mrs. Tyson. She testified that she came out of the stage door of Woods Theatre and was walking in the direction of the Garrick Theatre, "and all of a sudden



in either an attempt at a western division. It was not  
permitted to drive in a western division only and was not  
not as liberty to limit the western quality of evidence,  
because the driver of the automobile was not  
in said alley." The court rejected this reasoning by  
saying the words "in a manner which, under the circumstances,  
was reasonable and proper, having regard to the facts and  
the law of the case," after the words "reasonably necessary  
to the end of the first sentence, and also of limiting the  
second sentence after the word "reasonable" and before the word  
"necessary" in the last sentence. For the reason of law stated  
it is, in connection with what has been said regarding the  
evidence submitted on the question of the facts in this  
case, we are of the opinion that the trial court did not  
in setting this instruction and giving it to the jury as an  
instruction.

The instruction which the parties submitted was the  
plaintiff was guilty of contributory negligence as a matter of  
law. It was argued that negligence is not a crime. The  
plaintiff testified that he stopped at the corner of  
on the north side of the alley and took the car down  
toward the street entrance of the building. When he was  
stopped, that he looked back and saw the car coming  
and that he was not at the time of the collision.  
The defendant testified that he was driving on the  
street at the time he was looking west. One of the wit-  
nesses for the defendant was a Mr. Taylor. The testimony that  
the car was on the street at the time the car was being  
driven by the defendant, and all as a matter

an automobile came along at a pretty good speed \* \* \* and I went up against the wall and he turned quickly so he would not hit me \* \* \* and turned into the crowd of men." As to the speed of the truck this witness said it was going very fast. We have already referred to the other evidence on this point. The decided preponderance of the evidence was to the effect that no horn was sounded or other warning signal given. It seems clear from the testimony that as the defendant's truck cleared the American Express Company truck it swerved to the north to some extent. In crossing the alley from the north to the south the plaintiff was a few feet east of the express Company truck. Apparently he was first struck by the front fender of the defendant's truck on the left side, and this had the effect of wheeling him around, and as the rear part of the truck went by him he was struck again. Clearly, under all these circumstances, the question of the plaintiff's contributory negligence was a question of fact for the jury to pass upon and it could not be said that the plaintiff was guilty of contributory negligence as a matter of law.

For the reasons given, the judgment of the Superior Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR, P. J. AND O'CONNOR, J. CONCUR.



an automobile came along as a heavy load upon it. I went up against the wall and in turning quickly as he would and hit me " " and turned into the crowd of men. As for the speed of the truck this witness said it was going very fast. He knew already because of the danger advanced on this point. The loaded appearance of the evidence was to the effect that he knew was loaded at other turning point. It was also true the truck was that as the defendant's truck crossed the highway. The witness stated he arrived in the street to see the truck. It occurred to him that the truck in the street the plaintiff was a few feet east of the highway. Then, apparently he was first struck by the front bumper of the defendant's truck on the left side, and then had the effect of knocking him around, and as the rear of the truck went by him he was struck again. Shortly after all these occurrences, the question of the plaintiff's contributory negligence was a question of fact. For the jury to pass upon and it could not be said that the plaintiff was guilty of contributory negligence as a matter of fact.

For the reasons stated, the judgment of the court is reversed.

REVEREND J. J. AND O'CONNOR, J. J.

WILLIAM D. MURDOCK and  
WATSON M. MURDOCK, doing  
business as WILLIAM D.  
MURDOCK AND COMPANY,

Appellants;

v.

EDWIN B. MAYER,

Appellee.

234 I.A. 621

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed Apr. 30, 1924.

MR. JUSTICE THOMSON delivered the opinion of  
the court.

By this appeal the plaintiffs, doing business as Murdock & Company, seek to reverse a judgment for costs entered against them in favor of the defendant Mayer, in the Municipal Court of Chicago, in an action brought by the plaintiffs to recover an amount alleged to be due them from the defendant as a real estate commission, which, it is contended, had been earned in connection with the exchange of certain properties between the defendant and another. The issues were submitted to the trial court without a jury, and a finding and judgment for the defendant were entered on motion of the defendant at the close of the plaintiffs' evidence.

The services on which the plaintiffs claim a commission was due them were rendered by one Graham, who was connected with the plaintiff company as a real estate broker. Graham testified that he first met the defendant about July 1, 1920, at which time the defendant gave him a memorandum of four pieces of property, the first three being business pro-





perties and the fourth a residence, stating that he wanted to trade them for an equity in an apartment building and asking the witness to see what he could find for him; that several days later he again saw the defendant and submitted an apartment building owned by a man named Olson, which he told the defendant could be exchanged for his properties and that the defendant said he would investigate the Olson property; that on a later occasion he saw the defendant, who stated that the property submitted was satisfactory. The Olson property had a first mortgage of about \$60,000 on it and a second mortgage of \$7,500. Graham testified that the defendant stated that he would exchange his four pieces of property, which were clear, for the Olson property, subject to the first mortgage but not subject to the second mortgage and that Olson would have to pay that mortgage off if the deal was to be made. It seems that Olson's property was in the hands of another real estate broker, whose name was Schendorf. Graham testified that he submitted the defendant's proposition to Schendorf and that the latter conferred with his principal and returned with a counter proposition to the effect that he was not willing to take the residence property on that basis but that he would convey the equity in his apartment building for the three pieces of business property, belonging to the defendant, and \$15,000 in cash, Olson to pay off the first mortgage. Graham further testified that this proposition was not accepted by the defendant but he, in turn, made a new proposition, which differed from the one made by Olson in that it involved a cash payment of only \$10,000. According to Graham's testimony this brought the negotiations down to about July 12. Graham testified that he



parties and the same a statement, stating that he stated in  
 that form for the purpose of an agreement between the parties  
 the witness in fact that he stated that the parties  
 have taken in again the defendant and witness in some  
 want building owned by a man named Smith, which he told the  
 defendant would be transferred to his property and that the  
 defendant will be paid in full for the same property; that  
 on a later occasion he saw the defendant, who stated that the  
 property submitted was satisfactory. The same property for  
 a first mortgage of about \$10,000, as it was a second mortgage  
 of \$5,000. The defendant stated that the defendant stated that he  
 would exchange his four shares of property, which were then  
 for the same property, subject to the first mortgage for one  
 subject to the second mortgage and that there would then be  
 pay that mortgage off if the deal was to be made. It seems  
 that Green's property was in the hands of another real estate  
 broker, whose name was unknown. The defendant stated that he  
 submitted the defendant's proposition to the broker and that  
 the broker contacted with his principal and returned with a  
 counter proposition to the effect that he was not willing  
 to take the defendant's property of that kind and that he would  
 convey the equity in the property building for the same amount  
 of business property, subject to the defendant, and \$10,000  
 in cash. Green in fact got out the first mortgage, which was  
 satisfied for this proposition was not a subject in the future  
 and not so, in fact, was a new proposition, which followed  
 from the same by Green in that it involved a new payment  
 of only \$10,000. According to Green's statement this proposition  
 the negotiation about it would take 12, Green testified that he

wrote Schendorf, giving him defendant's last offer, and not receiving any answer from him, he called him over the telephone about the end of July; that Schendorf explained that he was about to leave on his vacation and it was arranged that Graham was to take the matter up personally with Olson, and he testified that he did so. Olson declined to make the deal except upon the basis of the three pieces of business property of the defendant and \$15,000 in cash, and Graham so advised the defendant, who "stood pat" as Graham expressed it, refusing to pay more than \$10,000 in cash. Graham testified that the matter remained in that condition for several weeks, during which he saw the defendant five or six times, and about the middle of August the defendant told him he did not want the Olson property, which was located on the south side of Chicago, and asked the witness to find him something on the north side. The witness looked for a building on the north side and submitted several buildings to the defendant, none of which were acceptable. Graham testified that on several occasions during the latter half of August he asked the defendant why he did not stick to the Olson property and he said he did not want it. He further testified that about the first of September, the defendant told him he had decided not to trade his properties and he suggested that the witness should not come to see him further, and Graham did not see him again, until some time in October, when he called at his office with one of the plaintiffs, having learned that a deal had been consummated between the defendant and Olson; and in that conversation the witness and his employer claimed that they had been the procuring cause of the transaction and were entitled to their commission and the defendant took the position that



where he was, having his telephone in front of him, and was  
receiving my answer from him, he called him over the tele-  
phone about the end of July; that defendant advised him  
he was about to leave on his vacation and he was waiting  
first to see if he could get the matter in properly with them,  
and he testified that he did not. When called to him the  
next day, except when the trial of the above cases at  
proceedings of the defendant and the other cases, and he was  
advised the defendant, and that he is in the witness  
relating to pay over the \$10,000 in cash. The defendant  
that the witness remained in the position for several weeks,  
during which he saw the defendant time to time, and  
saw the witness of the defendant and the other cases, and  
saw the witness of the defendant, which was located on the other side  
of the street, and saw the witness of the defendant on the  
other side. The witness looked for a building on the street  
side and indicated several buildings in the defendant, and of  
which were numerous. The witness testified that he several times  
saw during the latter half of August he saw the defendant  
why he did not call to the witness, and he said he did  
not want to. The witness testified that about the time he  
saw him, the defendant told him he had called him to look  
his properties and he suggested that he witness should not  
come to see him during his vacation and he was told,  
until some time in October, when he called at the office with  
one of two assistants, which testified that a deal had been made  
between the witness and his company which they had made  
the preceding year of the transaction and were waiting to  
close the deal and the defendant told the witness that

Graham had abandoned the deal and that it had later been consummated through the efforts of others.

Schendorf, called as a witness by the plaintiffs, testified to the effect that Olson and the defendant had entered into a contract about the 5th or 6th of September, the transaction involving the exchange of the Olson property for the three pieces of business property owned by the defendant and the cash payment of \$8,000. Schendorf testified that he negotiated this deal but that he received no commissions from the defendant but that Olson had paid him.

After some cross-examination of this witness by counsel for the defendant, it would seem from the record that he was made the defendant's witness, after which he testified that he, representing the Olson property, had his first talk with Graham about these properties, about the middle of June, at which time he submitted the Olson property to Graham and asked him to submit it to his client; that he never saw Graham after that but he had several conversations with him over the telephone between the middle of June and the first of August, during which period "the deal was working back and forth, we couldn't get together \* \* \* they offered four properties subject to the seventy-five hundred which we couldn't make because Mr. Olson wouldn't take the house. But he would take ten thousand dollars in lieu of the house. We couldn't get it through at that." The witness then testified that the deal "hinged" in that form until he went on his vacation and that when he came back a month later the deal "was off." He further testified that at the suggestion of Olson he then called Graham to see if they could get the deal





through "and Mr. Graham told me we couldn't put the deal through. " \* \* " He couldn't get the difference that he wanted in cash. He then said the deal was off. He couldn't put it through." The witness testified that he then dropped the deal until Olson apparently got after him again, and at his suggestion the witness went direct to the defendant, and about eight days after that, the deal was finally made.

Olson, also called as a witness by the plaintiffs, testified that the deal was closed September 30. This presumably was the time at which the deeds were exchanged. He testified that prior to July 1, Graham had made a tentative offer to him which the witness said he would accept. The testimony does not show how long prior to July 1 this was. Olson further testified that after these first negotiations with Graham, involving the defendant's property, he "did not see him for a couple of months \* \* \* I didn't get to see much of anything of him for a while then. He just didn't seem to get anywhere. He didn't come around." He testified that the last time he saw Graham was the latter part of July and that the deal which was finally made with the defendant was consummated September 30, and the contract was signed sometime prior to that date.

After this testimony Graham again took the stand and testified that when Schendorf called him up, upon returning from his vacation he "asked me if I had dropped that deal. I told him on the basis of the amount wanted by Mr. Olson, we would have to drop it as Mr. Mayer refused to give Olson that much money. If he would see Olson and get Olson to agree to take a lesser sum, I would again see Mr. Mayer and see if we





could put the deal through." He added that Schendorff did not say whether or not he would. At this point the plaintiffs rested their case, and the defendant made a motion for a finding in his favor, which motion the court allowed, as already stated.

It is conceded that it is the settled law that where a real estate broker is employed to negotiate a sale or exchange of real estate, and in connection with such employment, he is the means of introducing his client to another, with whom an exchange or sale is effected, the broker is entitled to his commission, although the client himself concludes the negotiations and although he may finally close the sale or exchange upon terms other than those originally specified by the client. On the other hand, if a broker fails in his effort to consummate a sale or exchange, and entirely abandons his efforts, and a sale or exchange is later consummated through the independent efforts of another, although with the customer with whom the broker was working, the broker will not be entitled to his commission.

In the case at bar, the broker, Graham, endeavored to effect an exchange of properties between the defendant and Olson. Olson was willing to convey the equity in his property to the defendant, in exchange for three pieces of property owned by the defendant and a cash payment of \$10,000. The defendant was willing to pay only \$5,000. The deal was finally consummated on the basis of a payment of \$6,000, and this within a very short time after the defendant had invited Graham not to call on him further in connection with the matter.





In our opinion, the plaintiffs made out a prima facie case to the effect that this deal was consummated as a result of the efforts of their employee, Graham, who acted as the defendant's broker. That the other broker, Schendorf, who represented Olson, did not consider that the deal had been consummated by his independent efforts, is apparent from the fact that he received a commission from his client, Olson, but none from Mayer, the defendant. We are further of the opinion that the evidence in the record does not show that Graham abandoned the deal. He did say to Schendorf, the broker representing Olson, that the deal could not be put through on the basis of the cash payment which Olson was demanding, namely, \$10,000. It is shown that he was not abandoning the transaction, when he suggested to Schendorf that if the latter could induce his client, Olson, to agree to take something less in the way of a cash payment, he would be glad to submit it to his own client, the defendant. It seems rather strange that within a very short time after this, the defendant should dismiss Graham from any further connection with the matter and then proceed to close the deal on the very basis which Graham was suggesting to Schendorf as a possibility - Olson finally accepting a payment of \$6,000, or only \$1,000 more than the defendant had been offering.

For the foregoing reasons we are of the opinion that the trial court erred in finding the issues for the defendant, at the close of the plaintiffs' evidence. The judgment of the Municipal Court is, therefore, reversed and the cause is remanded to that court for further proceedings not inconsistent with this opinion.

JUDGMENT REVERSED AND CAUSE REMANDED.  
TAYLOR, P.J. AND O'CONNOR, J. CONCUR.





135 - 38401

JAN PENKALA,

Appellee,

v.

JAN TOMCZYK,

Appellant.

234 I.A. 621

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed Apr. 30, 1934.

MR. JUSTICE THOMSON delivered the opinion of the court.

By this appeal the defendant Tomczyk, seeks to reverse a judgment for possession of certain premises, which was obtained by the plaintiff, Penkala, in an action of forcible entry and detainer, brought by the latter in the Municipal Court of Chicago.

It appears from the record that on July 15, 1932, the plaintiff and his wife entered into a contract with the defendant and his wife whereby the former agreed to sell and the latter agreed to buy, certain property for \$3150.00. The contract acknowledged the receipt of \$150.00 on the purchase price and it provided that the balance was to be paid within five days after title had been examined and found good. The balance was to consist of \$1,000 in cash; a first mortgage of \$1,000 due in two years, and a second mortgage for \$1,000, \$500.00 payable on or before six months and \$500.00 payable on or before one year. It further appears that the defendant and his wife took possession of the property and lived in the basement flat, for which it was agreed the defendant was to pay \$11.00 a month - apparently pending the consummation of the



3841 A. 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

THE - 181

deal. The defendant paid the first month's rent, amounting to \$11.00, but he did not pay the rent for August or September 1922, and on October 5, the plaintiff made a demand for possession, and later instituted these proceedings.

It further appears from the testimony of the plaintiff that he called upon the defendant to carry out his agreement for the purchase of the property, under the contract to sell, and the defendant refused to carry it out, giving as his reason that he did not have the money. The lawyer who drew up the contract of sale and represented the plaintiff in connection with that transaction, testified that on October 4, he was present when the plaintiff offered to go ahead with the sale of the property and the defendant declined. This witness stated that the defendant insisted upon making his first mortgage \$1,500 instead of \$1,000 and that the plaintiff declined to make that change in the terms, and as a consequence the deal fell through.

The defendant then took the stand and stated that on October 3, he had paid the plaintiff \$3,000 in currency for the property and that the plaintiff had delivered his warranty deed to the defendant at that time. He further testified that this payment was made in the presence of three witnesses, whom he named. None of them appeared to corroborate his testimony. The defendant offered in evidence the warranty deed in question. The plaintiff admitted that it was signed by him and his wife. This deed had been recorded under date of October 5. On cross-examination the defendant testified that this currency consisted of a large bundle of bills; that there were about thirty



deal. The action is said to have been taken, according to  
\$11.00, but he did not pay for the same on December  
1902, and on October 2, the plaintiff made a check for same  
action, and later introduced same accordingly.

It further appears from the testimony of the parties  
that there has been some confusion as to the amount of the  
check for the balance of the property, which the plaintiff  
paid, and the balance of interest to which it was due, being on the  
assumption that he did not have the money. The parties were then up  
the contract of sale and represented the plaintiff in the  
action with that representation, testified that on October 2, he was  
present when the plaintiff offered to pay the same with the sale  
of the property and the defendant declined. This witness stated  
that the defendant intended that he should pay the same  
\$11.00 instead of \$1,000 and that the plaintiff declined to  
take that money in the case, and as a consequence the deal  
fell through.

The defendant then took the case and stated that  
on October 2, he had the plaintiff \$1,000 in advance for  
the property and that the plaintiff had delivered the property  
and in the balance of that time. He further testified that  
this payment was made in the presence of some witnesses, whom  
he named, none of whom appeared in connection with the testimony.  
The defendant offered in evidence the money paid in connection  
The plaintiff testified that it was signed by him and his wife.  
This deed had been recorded with the clerk of the court on October 2, the same  
circumstances the defendant testified that this money was  
evidence of a large number of bills; that there were about thirty

fifties and about forty twenties, but that he could not remember just how many there were of the different denominations, "because the wife brought all the money." He testified that his wife brought the money from a safety deposit vault of which one Novitsky was the proprietor; that they had had a box in that vault for some two years, in the name of his wife, but that he did not remember the number of it; that he had a bank account at Novitsky's bank and that he had a "savings book of a building and loan association" in which he had about a thousand dollars, but that he did not remember whether his wife drew that out or not. He testified further that he had been working steadily for the past two years for one Michyska (one of the persons he named as being present at the time he paid the plaintiff \$3,000) that his earnings had amounted to fifty or fifty-five dollars a week; that the money which had been in the safety deposit box was not the money which had been earned during the past two years; that the last two years "I have a box, I have been saving my own money"; that he had the money with which he paid for this property on July 15, the day he entered into the contract; that the reason why he wanted the contract to provide for a first mortgage of \$1,000, and a second of \$1,000, although he possessed the cash, was "because I had my money by Mr. Michyska," who was apparently sitting in the court room and was identified by the witness; that Michyska paid him this money on October 2; that on that date Michyska paid the defendant \$3,000, and that the \$3000 he got from Michyska was the \$3,000 he paid to the plaintiff at the time he got the deed to the property. The defendant was then asked whether he had negotiated for a mortgage on the 8th of August, with



fifteen and about forty thousand, but that is nearly all  
 remember just how many there were of the different companies  
 alone, "because the wife brought all the money," he said.  
 that that his wife brought the money from a relative friend  
 there as much as money was the property that was  
 had had a box in that trunk for some time, as the wife  
 of his wife, but that he did not remember the number of it;  
 that he had a bank account at "North's" bank, and that he  
 had a savings book of a building and loan association, in which  
 he had about a thousand dollars, but that he did not remember  
 whether his wife knew that or not. He testified further  
 that he had been working steadily for the last two years for  
 one Michigan firm at the payment of \$200 a month, and  
 at the time he said the quantity of \$1,000, and his earnings  
 had amounted to \$150 or \$175—like dollars a week. That the  
 money which had been in the trunk was not all the  
 money which had been earned during the year two years; that  
 the last few years "I have a box, I have been saving up the  
 money; and he had the money all which he said for two  
 years; on July 15, the day he testified that the money  
 that the money was he wanted the quantity in dollars for a  
 direct outlay of \$1,000, and a amount of \$1,000, although  
 he possessed the cash, was "because I had no money of my  
 Michigan," the was apparently sitting in the trunk when was  
 was testified by the witness that Michigan had the cash  
 money as before it that he had this Michigan paid the two  
 thousand \$2,000, and that the trunk he had from Michigan was  
 the \$2,000 he paid in the amount as the time he had the  
 hand to the property. The witnesses who were asked whether  
 there was a connection in the eye of inquiry, with

a certain building and loan association, for the sum of \$1,500, and he said he did but that he did not go through with it because he did not need that money. He was then asked whether he signed a mortgage on that day, covering the property in question, and he said he did not. He was then shown a mortgage bond of the building and loan association referred to and he admitted that it contained his signature and that of his wife. The defendant testified that he had received the deed to the property and paid over the \$3,000 in currency, to the plaintiff at the plaintiff's house on the evening of October 3, at about 8 o'clock.

The lawyer who represented the plaintiff in his negotiations with the defendant took the stand and testified that the warranty deed in question had been in his personal possession on October 4, the day after the defendant claimed he had paid the plaintiff for the property and received the deed. Another lawyer who was associated with the one just referred to, testified that on the evening of October 3, at the time the defendant claimed the plaintiff had turned the deed over to him, and the defendant had paid the plaintiff \$3,000 at the latter's house, the plaintiff and his wife were present at the lawyer's office, having come there by appointment to execute the deed. Another witness connected with the building and loan association, which had been mentioned during the examination of the defendant, testified that the defendant and his wife had executed a mortgage bond to the building and loan association for \$1,500 and that later the plaintiff and the defendant had come together at the association offices one evening in September, and the defendant said he did not have money enough to close the deal, and



A certain building and loan association, for the year of  
1915, and he said he did not see the way to connect  
with it because he did not know what company. It was then  
said that he signed a mortgage on that day, covering the  
property in question, and he said he did not, in any way,  
know a mortgage loan of the building and loan association  
referred to and he stated that it was not the association  
and that of the city. The witness testified that he did  
receive the deed to the property and paid over the \$1,000  
in currency, to the president of the building and loan  
association of January 1, at about 2 o'clock.

The witness then mentioned the building and loan  
association with the defendant was the same and testified  
that the mortgage deed in question had been in his possession  
on January 1, 1915, after the mortgage deed  
he had with the building and loan association and he said the  
deed. Another lawyer who was associated with the law firm  
referred to, testified that on the evening of January 1, 1915  
the same the building and loan association had passed the  
deed over to him, and the witness had paid the building  
and loan association, the building and loan association  
president of the building and loan association, and he said he  
knew it because the deed, building and loan association was the  
building and loan association, which had been associated with  
the association of the building and loan association, and he  
testified that he had received a mortgage deed to the  
building and loan association, for \$1,000 and that he had  
the building and loan association and that he had paid the  
building and loan association and that he had paid the

that he was \$600.00 short, in addition to the mortgage. He further testified that at this time the owner declined to accept a \$1,500 mortgage, but insisted that it should be for \$1,000, as the contract provided. He further testified that the loan which the building and loan association was going to make, was not carried out and the deal fell through, because the defendant and his wife said they had no money.

In support of the appeal counsel for the defendant argues that the plaintiff had unquestionably given the defendant a warranty deed for the property and he calls attention to the fact that neither the payment of the money nor the delivery of the deed, as testified to by the defendant, were specifically denied by the plaintiff. The record does show that the plaintiff was not recalled to the stand after the defendant testified. The reason of it is plain from the record. The trial court took the position that it was so clear, from the defendant's own testimony, that he was not telling the truth, that he decided the case for the plaintiff without hearing evidence further. While the plaintiff did not take the stand in rebuttal, and categorically deny the defendant's testimony, the testimony submitted by the plaintiff in his case in chief was utterly inconsistent with that of the defendant. As already pointed out, the plaintiff testified that he had offered to carry out his contract with the defendant and had tendered him a deed, but that the deal had not gone through because the defendant had represented that he did not have the money.

It is contended that the defendant was insulted and intimidated by the trial court. There was no jury in this case. In our opinion such observations as the record shows





the court made were warranted by the developments at the trial. They furnish no excuse for the defendant's failure to call the three witnesses, who, according to his testimony, were present when he paid this \$3,000 in currency, although one of the three witnesses appears from the record to have been present in court at the time the defendant gave his testimony. The trial court seems to have been quite lenient with the defendant, in view of his contradictory story, for several continuances were given, in order to give the defendant an opportunity to submit all of the proof he had. On the occasion of the last continuance, one of the lawyers who testified for the plaintiff and who had represented him at the time the contract was entered into, told the court that he had seen the defendant and his wife on the day previous and that they said they had been advised by their lawyer not to be in court when the case came up again, and they were not in court, and further, their lawyer was not in court, but he had sent over a brother lawyer who had not been in the case previously, to cite some cases and make some legal argument to the court.

In our opinion, not a word of the testimony of the defendant could be believed by anybody. He first says that he paid \$3,000 in cash to the plaintiff, in the presence of three witnesses, none of whom he calls, although one of them is sitting in the court room; and after saying his wife brought this money from the safety deposit box, in almost the next breath he says that the \$3,000 in question was paid to him by his employer (the man sitting in the court room) on the day before he paid it to the plaintiff. He made other admittedly false statements. In our opinion there is not a word of believable



position in the world, which the company was  
then selling in the U. S. It is clear from the record that it  
never was delivered to the U. S. and it was never  
delivered to the U. S. and it was never

The company was the first to be  
placed in the hands of the U. S. and it was  
then and he made it clear that the company was to be  
placed in the hands of the U. S. and it was  
then and he made it clear that the company was to be  
placed in the hands of the U. S. and it was

The company was the first to be  
placed in the hands of the U. S. and it was  
then and he made it clear that the company was to be  
placed in the hands of the U. S. and it was

THE COMPANY WAS THE FIRST TO BE

PLACED IN THE HANDS OF THE U. S. AND IT WAS

143 - 28418

McKENZIE CLELAND, et al, as  
CLELAND, LEE & PHELPS,

Appellees,

v.

ROBERT G. MOORE,

Appellant.)

234 I.A. 622

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

Opinion filed Apr. 30, 1924.

MR. JUSTICE THOMSON delivered the opinion of  
the court.

This was an action of assumpsit, brought by the individuals comprising the law firm of Cleland, Lee & Phelps, against the defendant Moore, to recover fees claimed to be due them for services rendered. By this appeal the defendant seeks to reverse a judgment for \$388.50 recovered by the plaintiffs. The declaration filed by the plaintiffs contained a count declaring upon an account stated and it also contained the common counts. A copy of the account sued on, attached to the declaration read, "For services rendered in the matter of the Estate of Harold W. Virden, at the instance of the guardian of the person of the minor, -- \$250.00." This case has been tried twice. On the first trial a verdict was rendered in favor of the defendant. The motion of the plaintiffs for a new trial having been allowed such new trial was had, resulting in the judgment from which the defendant has perfected this appeal.

One of the plaintiffs testified that he and his  
Associates rendered services as lawyers, at the request of the





defendant, and that these services consisted in the preparation and presentation of his accounts as guardian of the person of Harold M. Virden, and in representing him in the Probate Court in connection with a contest over those accounts which had been occasioned by the objections thereto, interposed by the State Bank of Chicago, as Guardian of the minor's estate. The defendant contends that this testimony was improper, as being at variance with the pleadings of the plaintiffs, and that the trial court erred in overruling his objections thereto. In our opinion there was no variance, for the testimony in question was admissible under the common counts.

It is contended that the trial court erred in denying the defendant's motion for a directed verdict, both at the close of the plaintiffs' case and at the close of the entire case. The defendant may not now be heard to contend that the testimony submitted in behalf of the plaintiffs failed to make out their case, and that it was error to deny his motion for a directed verdict, at the close of the plaintiff's case, for he waived any right he may have had to press that matter, by failing to stand on that motion and by proceeding with his own proof. When all the testimony had been submitted - that submitted in behalf of the defendant as well as that submitted in behalf of the plaintiffs - it is our opinion that the defendant's motion for a directed verdict was properly overruled.

It appears from the record that at the close of the contest in the Probate Court, over the accounts submitted by the defendant as Guardian of the person of the Minor, Virden, that the court entered an order fixing the amount to which the



testimony, and that these persons were in the presence of the defendant at the time of the murder.

[illegible]

doi:10.1017/S002229240000199

It is requested that you advise the Bureau of the results of your investigation.

defendant was entitled, as Guardian, on his accounts, at \$1250.00, and a further order giving the defendant leave to pay the plaintiffs in the case at bar, as fees in full for their services as attorneys, rendered to him in connection with his accounts and their presentation, the sum of \$350.00. It is contended by the defendant that the latter order, entered by the Probate Court, does not constitute the basis of any legal liability on his part to the plaintiffs, such as would enable them to recover judgment against him for \$350.00, and in this connection it is contended that the evidence fails to show that the defendant had received any such amount to be turned over to the plaintiffs.

The abstract filed in this case is so far from a compliance with the rules of this court, that it would have been stricken on motion. It is practically impossible to gain any information from the abstract as to what the testimony was. By referring to the record we find that one of the plaintiffs testified that this contest, over the defendant's accounts as Guardian, in the Probate Court, was taken up to the Supreme Court; that the controversy involved over those accounts was finally settled; that in a conversation the witness had with the defendant on one occasion, the defendant advised the witness of the settlement of the controversy over these accounts; that in this conversation, the defendant explained some matters involving a controversy regarding property, that had arisen after the death of the father of his ward, the minor, Virden, and in this connection he mentioned Mrs. Virden and an older brother of his ward, Fred Virdan; that the defendant had stated that, in connection with some sort of





a settlement which had been had by them, the defendant," had gotten Fred to settle with her (his mother) and she had settled with him and given him \$3,350." This witness testified further that in this conversation he remarked to the defendant that the fees of the plaintiffs, amounting to \$350.00, were involved in the settlement of the proceeding which had gone up to the Supreme Court and that the defendant stated he had spent it and added that he thought the plaintiffs might get that much out of the State Bank. Following this, the witness and the defendant went to the office of the senior member of the firm, Judge Cleland, where a further conversation was had, in which Judge Cleland and the witness contended that the defendant owed them \$350.00 and the defendant said something to the effect that he either had spent it or that he needed it, but that he would try to get it for the plaintiffs. This witness further testified that in a later conversation the defendant told him that Mrs. Virden had agreed to settle with the older son, Fred, for \$1500.00 in connection with some partition suit involved in the matters to which reference has already been made, and in this conversation the defendant stated "Fred has agreed that I may have \$350 and I would have this \$350 to pay you."

Judge Cleland testified in corroboration of the witness already referred to and further that on one occasion, during the time they were having their controversy with the defendant over the \$350.00, which the plaintiffs claimed was due them for services, in the presence of the plaintiff Phelps, and the witness, the defendant produced a check for \$350.00, payable to the order of Cleland, Lee & Phelps, and



I have been thinking about you very much lately, and wondering how you are getting along. I hope you are well and happy. I would like to see you soon.

Your friend,  
John Doe

signed by Frederick M. Virden. The defendant objected to this testimony on the ground that the check was the best evidence of its contents. Mr. Lee, the witness from whose testimony we have quoted above, had stated in connection with this testimony, that on one occasion in a conversation with the defendant he had stated that in his opinion the defendant, who was a minister of the gospel, had done something which he, the witness, felt he, the defendant, could not afford to do, namely, that after producing this check drawn to the order of the plaintiffs and signed by Frederick Virden, he had asked Judge Cleland and Mr. Phelps to let him have the check until the following Monday, as it was post-dated and he had promised Fred Virden he would not put it through until then, and Mr. Lee further testified that in this conversation he reminded the defendant that he had never again turned that check over to the plaintiffs, and that Frederick Virden had told the witness that the defendant had persuaded him to tear up the check and make out a new one for the same amount, payable to the defendant personally, which check the defendant had cashed and obtained the money, and had stated he would get the money out of his ward's estate in some way, to pay to the plaintiffs. The trial court ruled that in view of this latter testimony, the objection of the defendant, to the testimony of Judge Cleland, regarding the check, was not well taken and the objection was overruled, and properly so, in our opinion.

Judge Cleland proceeded to testify that as the defendant handed the check, drawn to the order of the plaintiffs, and signed by Frederick Virden, to him, he said; "Here is your





\$250.00." The witness was about to put the check in his pocket when the defendant said that the check was dated the following Monday and he asked that he be permitted to retain it until its due date and that he would then return it, whereupon, the witness handed the check back to the defendant. Judge Cleland further testified that the check was never returned and that the \$250.00 had never been paid.

On cross-examination of Judge Cleland, counsel for the defendant attempted to lay the foundation for impeachment by asking him whether he had not testified on the former trial of the case "as to the services you performed in this connection." Objection to this question was sustained and the defendant assigns this ruling as error. The ruling was proper because in his direct examination in the case at bar the witness had testified to nothing concerning the services performed.

The plaintiff Phelps also testified, corroborating the testimony of the other two plaintiffs. The defendant by his testimony flatly denied most of the facts testified to by the plaintiffs. He denied that he had ever had in his possession, at any time, a check signed by Frederick Virden, payable to the order of the plaintiffs' firm or that he had ever shown any of the members of the firm a check made payable to the firm, but he stated that he did show them a check drawn to his own order, personally.

Frederick W. Virden was produced as a witness on behalf of the defendant. He identified the check, signed by him and drawn to the defendant's order personally, for \$250.00,



Q. Now, the witness was asked to tell you what he saw  
about when the witness said that the man was there  
the following morning and he said that he was standing in  
front of it until the two men and that he could then return  
it, however, the witness heard the man talk to the  
detention. These things further confirm that the man  
was never released and that the 1930s, in fact, were still

Q. Now, the witness said that the man was  
for the defendant arranged to let the defendant for the  
prosecution by saying the matter he had not testified in the  
court trial of the man as to the matter for the  
in this connection. The witness is the witness was not  
fired and the witness said this was a error. The  
witness was never released in the other connection in the  
case of the witness and testified to having testimony  
the witness testified.

Q. The witness said that the witness, however,  
ing the testimony of the other two witnesses. The witness  
and by the testimony that he heard out of the other witnesses  
to by the testimony. The witness said he was not in the  
connection of any time, a check signed by the witness, witness,  
responsible to the court of the testimony that he had  
ever shown any of the evidence at the FBI & check made by -  
this at the time, but he stated that he did not have a check  
shown to him and witness, however.

Q. Now, the witness was asked to tell you what he saw  
about the man, the witness said that the man was there  
the following morning and he said that he was standing in  
front of it until the two men and that he could then return  
it, however, the witness heard the man talk to the  
detention. These things further confirm that the man  
was never released and that the 1930s, in fact, were still

and he then testified that he never gave the defendant any other check for that amount; that he never made out a check payable to the order of the plaintiffs, for \$250.00 and gave it to the defendant; that the reason why he gave the check to the defendant, which was drawn to him personally, for \$250.00, was that the defendant wanted to have \$1500.00 with which to engage in business and he only had \$1250, "so he, being a friend of mine, I was glad to advance him the remaining \$250.00. That is the whole purpose of the transaction." He further testified that the amount of this check was to apply on what the defendant considered was due him from his ward, the brother of the witness, for the latter's "board and keep."

By referring to the record, we find that on cross-examination of this witness he stated that he had had luncheon with the defendant on a day during the week previous to the trial and that at that time the defendant and he had discussed this case and the defendant asked him if he recalled the particulars about this check; that the defendant told him he would probably be called as a witness. He stated that it was not the fact that the defendant had told him that he must deny making out a check to the order of the plaintiffs. The witness further denied that he had ever told the plaintiff Lee that he had made out a check to the order of the plaintiffs and given it to the defendant and that the defendant had gotten him to tear it up and make out another and he denied that he had ever explained to the plaintiffs that the check that he had drawn to their order had been a counter check and not one taken from his regular check book and for that reason the check did not



and in the testimony that he gave for the defendant and  
other things for that matter; and he never said or did  
anything in the matter of the plaintiff, the defendant and  
have it in the defendant; and the reason why he gave the  
proof to the defendant, being that there is his personal  
for \$100,000, and that the witness wanted to give \$100,000, and  
which he wanted to give to the defendant, and he gave it to  
ing a friend of mine, I was then so situated that the testimony  
was, that the whole amount of the testimony, the  
testimony established that the amount of this thing was an asset  
in which the defendant committed and was for the good, and  
nothing of the witness, for the witness's "good and right".

By referring to the witness, he filed that he knew  
examination of this witness he stated that he had had  
with the defendant on a day during the week previous to the trial  
and that on that day the defendant and he had discussed the  
case and the defendant asked him if he recalled the particular  
facts this case; that the defendant said that he would probably  
be called as a witness. He stated that it was not on that  
that the defendant had said that he was going to call him  
a check on the matter of the plaintiff. The witness testified  
that he had seen the defendant and that he had  
made out a check on the order of the plaintiff and given it  
to the defendant and that the defendant had given him the  
it up and made one answer and he stated that he had given the  
planned to the plaintiff that the check that he had given to  
that check had been a check for \$100,000 and that the

show in his stubs; although he admitted on one occasion bringing his check book to the plaintiffs' office, to exhibit his stubs in corroboration of a statement he had made to them, but he said that statement did not refer to any check drawn to the order of the plaintiffs, but must have had to do with some other check. At this point there was apparently considerable confusion in his testimony as to just what check he was talking about when he was referring to a check which had not been taken from his book and therefore did not show on his stubs, and after some cross-examination on this matter, the witness said, "Well, I think it must have been a check for Cleland, Lee & Phelps, then." Thereupon, this witness admitted that he had told the plaintiffs at their office that he had made out a check to their order and that the defendant had asked him to tear it up and draw one to his order, which he did.

On re-direct examination this witness apparently attempted to get out of the position in which he found himself, by saying that the plaintiff had told him to say what he had just testified to at the close of his cross examination. At this point the court took up the examination of the witness and asked him why he had made out a check for the plaintiffs and he answered that there was \$250.00 due them and he wanted to pay them if he could but that he was not able to; and that he had given this check to the defendant for the purpose of paying the plaintiffs; that this occurred on September 26, and he asked the defendant to hold the check until September 29, and that the defendant came back to him with the check and told





him to tear it up and give him, the defendant, a new check, which he did, the latter check being for the same amount but drawn to the order of the defendant. Counsel for the defendant then examined the witness and he again stated that the defendant had asked him to tear up the first check, and he told when and where that conversation took place. He further admitted to counsel for the defendant that when the latter asked him for information about this he had told counsel that he had never given but one check. The court interrogated the witness further as to why he had at first denied giving the check drawn to the order of the plaintiffs, and he said that he had not recalled it until Mr. Lee had refreshed his memory.

Now, on this testimony, there could have been any other verdict and judgment in this case, than for the plaintiffs, is difficult to see. The defendant contends further that there was error on the part of the trial court, in connection with some remarks that were made by the court, and also in connection with the refusal of instructions. In neither matter do we feel any error was committed. So far as the instructions were concerned, only the refused instructions are abstracted, although there is a line or two giving the general purport of the given instructions. Many of the refused instructions had to do with matters that had no application to the questions which the jury had to decide. Even if there had been some error in denying some of these instructions, we would not disturb this judgment, for reasons already referred to.

The judgment of the Superior Court is affirmed.

AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.



him to turn it up and give him the material & was clearly  
 which he did, the latter then asked for the same amount for  
 them to the value of the material. I would say the material  
 and then returned the material and he again stated that he  
 returned and asked him to turn on the light switch, but he told  
 him and when the material was turned on, the light was  
 asked to account for the material and when the light was  
 him for information about this he told me that he  
 and never given him any more. The man interrupted the  
 witness further as to why he had at first stated that the  
 about them as the value of the material, and he said that  
 he had not received it until he had received his money.  
 Now, on this testimony, there would have been no  
 other verified and judgment in this case, then the witness  
 is allowed to say. The witness further stated that when  
 was given to the fact of the light switch, in connection with  
 some money that was given up the money and also in connection  
 with the fact of the material. It is not clear as to what  
 any error was made. It is to be the question was not  
 asked, only the witness testimony was stated, although  
 there is a case on the fact of the material, but in the  
 instructions, one of the witness testimony was to be  
 matter that had no relation to the question with the fact  
 had to be made. It is to be the fact of the material  
 one of them instructions, as well as the fact of the material.  
 The witness clearly stated that  
 The purpose of the witness was to establish

178 - 28454

SAMUEL QUINN,

Appellee,

v.

CHICAGO MUTUAL CASUALTY COM-  
PANY, a corp., et al,

Appellant.

234 I.A. 622

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed Apr. 30, 1934.

MR. JUSTICE THOMSON delivered the opinion of  
the court.

The plaintiff Quinn brought this action in the Municipal Court of Chicago, against the Chicago Mutual Casualty Company and The American Mutual Life Insurance Company, alleging that he was in the employ of the defendants under a written contract, on a salary of \$300 per month, from February 1 to April 30, 1922, during which time he performed all the duties required of him and he alleged that there was due him, as salary under the contract for the period referred to, \$740.00. In his statement of claim the plaintiff made a further claim for \$100, as attorney's fees, as "provided by statute." The defendants filed an affidavit of merits denying liability and alleging that they had made a full settlement with the plaintiff on May 5, 1922. The defendants also filed a claim for set-off, in the sum of \$669, which they alleged <sup>they</sup> had advanced at plaintiff's request, and on his assurances that he would reimburse the defendants to the extent of the amount thus advanced by them "to his pretended salesmen for which he was responsible to the defend-





ants." Plaintiff filed an affidavit of merits denying the claim made by the defendants in their claim for set-off.

On October 24, 1922, the case came on for hearing in due course, and the defendants were not present, whereupon a jury was called and the plaintiff submitted his evidence, after which a verdict was returned finding the issues for the plaintiff and assessing his damages at the sum of \$740. Thereupon, judgment was entered against the defendants for \$740.00, "for wages due plaintiff as a laborer in form as aforesaid assessed, together with the costs by the plaintiff herein expended, and one hundred dollars (\$100) attorney's fees taxed as costs."

On November 13, 1922, the defendants submitted their motion to set aside and vacate the judgment which had been entered against them. In support of this motion the defendants submitted the affidavit of one Buhler, president of the defendant Chicago Mutual Casualty Company, in which he set forth that on being served with summons, the defendants had employed one Riesen as their attorney and had relied upon him to watch the case and protect their interests; that some difference of opinion arose between affiant and Riesen and affiant requested Riesen to deliver the files in this case to another lawyer named Pilkington; that Riesen refused to do as affiant requested; that Pilkington refused to enter his appearance in the case until after Riesen's withdrawal; that Riesen did not withdraw his appearance and affiant relied upon Riesen to notify him of any further action in the case.

Under date of November 27, 1922, the court denied the motion of the defendants to vacate the judgment. Under date of December 8, 1922, the defendants prayed an appeal.



... Plaintiff filed an affidavit of service showing the  
... of the defendant in that state for service.

On October 19, 1961, the case was set for hearing  
in the court, and the defendant was not present, whereupon a  
jury was called and the plaintiff submitted the evidence, after  
which a verdict was returned finding the defendant liable for the  
costs and reasonable attorney's fees of \$10,000. Thereafter,  
judgment was entered against the defendant for the sum of \$10,000,  
which was affirmed as a judgment in favor of the plaintiff. Thereafter,  
together with the costs of the plaintiff's appeal, and  
one hundred dollars (100) attorney's fees to be paid.

On November 19, 1961, the defendant submitted  
their motion to set aside and vacate the judgment and  
been served with notice. In support of their motion the  
defendants submitted the affidavit of the defendant, showing  
that the defendant was not properly served, in that it  
was found that no return was made with summons, the defendant  
has employed one attorney in their attorney and has failed  
upon him to return the same and showed that judgment was  
was returned at a time long before the return was made  
and return submitted. It was in this case that  
to answer proper and sufficient that return was made  
attest accordingly that judgment should be set aside and  
also in the case that after return was made that return  
the defendant did not return and return failed upon return  
to satisfy him of no further action in the case.

Under date of November 27, 1961, the court ordered  
the setting of the case for hearing for December 1, 1961.

The record states that the appeal prayed was an appeal from the judgment. The bill of exceptions appearing in the record contains only the affidavit submitted in support of the motion to vacate and a notation of the exception of the defendants to the order of the court denying their motion. The bill of exceptions then recites that the defendants then prayed an appeal from the judgment of the court. No point is made that the appeal was taken too late and we shall pass on the merits of the questions presented. This bill of exceptions was approved by the trial court on January 6, 1923. It appears from the record that on the same day the court entered an order, apparently on the court's own motion, amending the order of November 27, 1922, which was the order overruling the defendants motion to vacate the judgment, so that said order would also be to the effect that the set-off filed in the case "be and it is hereby dismissed on order of the court."

In support of their appeal the defendants contend that the trial court erred in denying their motion to vacate the judgment. Motions to vacate judgments within the judgment term or in the Municipal Court of Chicago within 30 days from the date of the judgment, are addressed to the sound discretion of the court and will not be disturbed unless an abuse of such discretion is shown. One seeking to have a judgment set aside, where there has been an ex parte hearing in the absence of the defendant must, in support of such motion, show both that he has a meritorious defense and that he has acted with due diligence to protect his rights and interpose his defense upon the hearing of the case. In such situations, it is further the rule that the negligence of an attorney employed in the case,



The second matter that the court passed on in regard to the  
the judgment. The bill of exceptions appearing in the record  
contains only the affidavits submitted in support of the motion  
to vacate and a notation of the composition of the witnesses  
to the story of the court during their motion. The bill  
of exceptions then recites that the witnesses were sworn as  
affirmed from the judgment of the court. No bill is said to be  
the record and taken and have not been taken on the matter  
of the questions presented. This bill of exceptions was approved  
by the trial court on January 11, 1911. It appears from the  
record that on the same day the court entered an order, which  
reads on the court's own motion, granting the entry of judgment  
by, 1911, which was the order withdrawing the bill of exceptions  
so returns the judgment, so that this order would also be so  
the effect that the bill of exceptions is the same as the one in  
noway obtained on entry of the judgment.

In support of this record the defendant contends  
that the trial court never in denying their motion to vacate  
the judgment. Motion to vacate judgment which the judgment  
taken on in the judicial branch of Michigan circuit to have taken  
the date of the judgment, and submitted to the court for decision  
of the court and will not be withdrawn unless on a bill of exceptions  
discretion is shown. One seeking to have a judgment set aside,  
where there has been an error, should move for a bill of exceptions  
before the court, in support of such motion, and then file the bill  
in a written form before the court and then be heard upon the bill.  
Motion to vacate the judgment and judgment on the motion upon the  
hearing of the court. In such a case, it is further stated in the record

will be imputed to his client. Mitsche v. City of Chicago, 280 Ill. 368. Clearly, under the showing made by the affidavit presented in support of the motion of the defendants to vacate the judgment in the case at bar, it cannot be said that the trial court abused its discretion in denying the motion. The affidavit not only failed to make a showing of due diligence, but it disclosed negligence which must be imputed to the defendants.

The defendants further contend that the trial court erred in entering judgment against them without disposing of the issues made on the claim for set-off. The issues being made up on the plaintiff's claim against the defendants and the claim for set-off by the latter against the plaintiff, the entering of a judgment in favor of the plaintiff and against the defendants, was an effectual disposition not only of the plaintiff's claim but of the defendants' set-off. The trial court was without jurisdiction to enter the order of January 6, 1923, after the appeal had been prayed and allowed and the appeal bond approved. But, in our opinion, that in no way affects the questions presented on this appeal.

The defendants further contend that the trial court erred in assessing as costs against them, \$100 as attorney's fees, on the theory that the plaintiff's claim was one for wages, when the contrary appeared by the plaintiff's pleadings. It is apparent from the statement of claim that plaintiff's claim was not a wage claim, and therefore he was not entitled to an allowance for attorney's fees. Goodridge v. Alton, 140 Ill. App. 373.





It is also contended that the trial court erred in taxing the attorney's fees against the defendants in connection with the judgment rendered, when there was no finding in the verdict that the amount sued for by the plaintiff and awarded by the verdict, was for wages. In our opinion, the latter point is also well taken. In Bryant v. Vandalia R. R. Co. 184 Ill. App. 284, this court (Third District) held that under the statute entitling plaintiff to attorney's fees, in an action for wages, where the trial is by jury, the question as to the amount of the attorney's fees is for the court; but before such fees may be allowed it is necessary for the jury to find that the amount due is the amount demanded of the defendant, in the written demand made by the plaintiff, and find that the amount is due for labor or wages. In the case at bar, the jury, by their verdict, made no finding to that effect. It was, therefore, error for the court to include in the judgment awarded the plaintiff, the sum of \$100 as attorney's fees, and to tax the same as costs against the defendants.

The Municipal Court judgment is affirmed on condition that the plaintiff file a remittitur in this court within ten days, in the amount of \$100 - being the amount awarded him by the trial court as attorney's fees and there taxed as costs against the defendants.

JUDGMENT AFFIRMED WITH REMITTITUR.

TAYLOR, F.J. AND O'CONNOR, J. CONCUR.



It is also suggested that the trial should proceed  
in having the attorney's fees against the defendant is more  
action with the judgment rendered, than there has been  
in the finding that the amount was due by the plaintiff and  
approved by the court, was the right. It was ordered, the  
latter being in error with regard to the finding of the court.  
The court in this case (1894) decided that the  
the statute requiring liability in attorney's fees, in an  
action for wages, where the trial is by jury, the plaintiff  
as to the amount of the attorney's fees in the matter.  
The statute which has been introduced in the attorney's  
the day of 1894 that the amount due to the plaintiff is  
at the defendant, in the action for wages, in the plaintiff.  
and that that the amount is due to the plaintiff. In the  
case of 1894, the jury, by their verdict, made it known as  
that effect. It was, therefore, error for the court to do  
this in the judgment rendered for plaintiff, the case of  
1894 as attorney's fees, and for the court to have ordered  
the defendant.

The majority of the judges in the  
decision that the plaintiff will be liable in the matter  
which was done, in the case of 1894 - being the matter  
involved in the trial was an attorney's fees and costs  
that he must against the defendant.

209 - 28485

JEREMIAH W. MCGRAW,

Appellee,

v.

EMILIE JENSEN, et al,

Appellants.)

234 I.A. 622  
APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

Opinion filed Apr. 30, 1924.

MR. JUSTICE THOMSON delivered the opinion  
of the court.

The complainant McGraw filed his bill in chancery against the defendants Jensen and wife, asking the court to decree the release or satisfaction of certain judgments, the surrender of a trust deed and note secured thereby, held by the defendants, and for an accounting between him and the defendants, as to matters arising out of a trade or exchange of real estate. In this exchange of real estate, the complainant had conveyed certain property in the Village of Glencoe, to the defendants and the latter had conveyed to the complainant, a Wisconsin farm. The conveyance of the Glencoe property, by the complainant to the defendants, was made by the terms of the deed, "subject to incumbrances aggregating the sum of Eleven Thousand One Hundred and Thirty Eight and 35/100 (\$11138.35) Dollars; also subject to all unpaid interest on said mortgages to date; subject to general taxes to the amount of \$175.00 and to the payment of all special assessments due and payable this year, 1918." The conveyance of the Wisconsin farm by the defendants to the complainant, was made according to the terms of the deed;



THE STATE OF NEW YORK

IN SENATE,

1891.

REPORT OF THE

COMMISSIONERS OF THE LAND OFFICE.

ALBANY: JAMES B. LEECH, 1891.

THE COMMISSIONERS OF THE LAND OFFICE.

OF THE STATE.

The Commission on the Land Office.

against the interests of the State.

between the interests of the State.

interests of a great many and the interests of the State.

interests, and the interests of the State.

as the interests of the State.

in this manner of the State.

interests of the State.

and the interests of the State.

first. The interests of the State.

and the interests of the State.

less in the interests of the State.

the interests of the State.

also interest in the interests of the State.

subject to the interests of the State.

interests of all the interests of the State.

interests of the State.

in the interests of the State.

"subject to first and second mortgages aggregating the sum of \$18,700."

The issues as made up by the pleadings, were referred to a master in chancery who heard the testimony and submitted his report to the chancellor, as to the credits he recommended be allowed the respective parties. The credits thus allowed the complainant, in the report of the master to the chancellor, aggregated \$371.69, and those allowed the defendants aggregated \$299.99, leaving a balance which was found to be due from the defendants to the complainant amounting to \$371.70. The master also recommended that the defendants be decreed to release or satisfy the judgments and also that they be decreed to return the trust deed and notes as prayed by the complainant in his bill. The chancellor followed the recommendations of the master and entered a decree accordingly. By this appeal the defendants seek the reversal of that decree.

There were a number of items, in connection with which the complainant claimed amounts were due him from the defendants in the taking of the account, and there were also a number of items in which defendants claimed amounts were due them from the complainant. With few exceptions, all these items were the subject of conflicting testimony. As was pointed out by our Supreme Court in Union Colliery Co. v. Fishback, 303 Ill. 165, it is the established rule that the master's findings approved by the chancellor, will not be disturbed by a court of review, unless manifestly and clearly against the weight of the evidence, citing Siegel v. Andrews & Co., 181 Ill. 356.

When the respective parties met to close their deal and exchange their deeds, the various items entering





into the adjustment of accounts involved in the two properties, such an insurance and interest and taxes and things of that kind, were figured up and a balance struck, by which it was found that the complainant should pay the defendants, \$371.65. The defendants contend that this amounted to a settlement between the parties and it seems to be their position that it amounted to an account stated, but in our opinion such a proceeding does not possess the elements of an account stated nor would it preclude either of the parties from later maintaining that the adjustment of their respective accounts at the time the transaction was closed, involved the doing of certain things by each of the parties, subsequent to that time and from contending that those things had not been done as agreed.

It further appears to be the position of the defendants, as outlined in the reply brief filed in this court in their behalf, that although the conveyance of the Glencoe property to them was made "subject to" certain encumbrances in connection with which the plaintiff was given credits in the account as found by the master, such a course was error because it had not been recited in the deed conveying the Glencoe property, that the defendants had "assumed" these encumbrances. Such a contention is not tenable. While it is true that the holder of such an incumbrance might not get a personal judgment or decree against the defendants, it would nevertheless be true that, as between the complainant as grantor and the defendants as grantees, the complainant would be entitled to a decree in such a proceeding as the one at bar, reimbursing him for such payments as he had been obliged to make on encumbrances subject to which the Glencoe property had been conveyed.





Another contention made by the defendants is that error was committed in crediting the complainant with certain items, in the taking of the account, although those items had not been pleaded. In a bill for an accounting it is not necessary for a complainant to plead all the items on which he claims there is a credit due him, before a credit can be allowed, in the taking of an account.

Various other contentions are made with reference to specific items involved in the account, and we shall refer to them in order, as they are made.

(1). The record shows that when the parties exchanged their deeds, an allowance was made for taxes on the Glencoe property and as was indicated by the paragraph in the deed, that amount was \$175.00. The complainant testified that that was the best "guess" the parties were able to make at the time and that it was then understood and agreed that if it was ultimately found that the taxes were less, the complainant was to have a credit for the difference, and his testimony further was that when the taxes were paid they were \$136.08. The defendant Jensen, corroborated by one Martin, a lawyer who represented him at the close of this real estate exchange, whose brother and partner represented the defendants in the trial of this case, testified that nothing was said at the time the deal was closed about rebates on taxes. The master recommended a credit to the complainant on this item.

(2) It appears from the record that at the time the transaction in question was closed, there was a mechanic's lien on the Glencoe property amounting to \$390.00 in favor of



and of education and of the collective method.

[illegible]

...in the ... ..

...the fact that the ...

... .. (1)

The above information was obtained from the records of the Bureau of Land Management, Department of the Interior, Washington, D.C., and is being furnished to you for your information.

Another very serious problem for the Bureau is the fact that the Bureau has no control over the release of information from the Bureau to the public. The Bureau has no control over the release of information from the Bureau to the public. The Bureau has no control over the release of information from the Bureau to the public.

TO THE HONORABLE MEMBERS OF THE HOUSE OF REPRESENTATIVES, AND TO THE SENATE OF THE UNITED STATES, IN CONGRESS ASSEMBLED, FOR THE YEAR 1890.

(2) It appears from the records that at the time the examination is conducted and signed, there was a reasonable

one Edwards, which the complainant agreed to take care of, and he testified that he had done so, and it was stipulated that this lien had been released. The complainant testified that at the time the transaction was closed, he gave the defendants, as security for the carrying out of his agreement to take care of this mechanic's lien, his note for \$371.65 with two interest notes thereon and a trust deed securing them. It will be noted that this was just the amount which it was found the complainant should pay the defendants, on their figuring up their respective credits at the closing of the deal, and it is the defendants' position that this note and security was given on that indebtedness. The identity of the two amounts would seem to support that position. However, Mr. Martin, the lawyer for the defendants, representing them when the deal was closed, gave testimony which would seem to lend some support to the complainant's contention. He testified, referring to this note and trust deed given by complainant, saying "The note was given on the contingency that McGraw would do certain things; in other words, that he should get rid of some mechanic's liens that had been filed against the Glencoe property; the Hubbard Woods Lumber Co. or material company and some other, Edwards Company I believe, and McGraw claimed to have paid these and produced a letter claiming that they had been paid, and then the question of payments came up which McGraw was owing to Jensen, - as to the validity of them and the amounts which Jensen claimed to have paid McGraw, and ultimately resulted in a dispute, and on the basis of that contention the notes were not surrendered, or the trust deed, to McGraw." The master found that the mechanic's lien in favor of Edwards had been taken care of and released, and re-



one hundred, which the commission agreed to take care of, and  
he testified that he had done so, and it was stipulated that  
this item had been released. The commission testified that it  
specifies the transportation and release, in part, to the  
specify the the carrying out of this agreement to take care  
of this medical item, his name was given, as with the two  
fewest notes known and a great deal concerning them. It  
will be noted that this was just the nature of the  
to the commission should pay the balance, as they  
figuring up their respective credits as they closed at the  
hall, and it is the Commission's position that this was the  
essentially was given on that basis. The identity of the  
for medical work was in regard to medical, however,  
Mr. Nelson, the lawyer for the government, representing that  
when the deal was closed, that testimony was given, as seen to  
last some months in the Commission's possession. It was  
that, relating to this case and that that they had completed  
and, saying that this was given to the Commission and that  
would be certain to be in their hands, and he knew it was  
at some point in time that was given to the  
dispute between the medical work and the medical  
company and was about, the company I believe, and that  
related to that, and that was a matter of dispute that  
they had been paid, and the question of payment was up  
which would not be in the hands of the company, and  
and the amount which would be paid to the company, and  
ultimately resulted in a dispute, and on the basis of that  
commission the report was not completed, as the report  
be prepared. The matter being that the commission's time is  
in the hands of the company, and the company, and the

recommended that the notes and trust deed, which the complainant claimed to have given, to secure that action on his part, should be returned, and the court so decreed.

In view of the testimony to which we have referred, we are not in a position to conclude that there was any error in that regard.

(3) The complainant further testified that there was another mechanic's lien amounting to \$71.00, in favor of the Acorn Hardwood Floor Company, at the time the properties were transferred and that this was a part of the encumbrances, subject to which the McGraw property was taken by the defendants, under the deed to them. He further testified that they had not paid it and he had been obliged to. Martin testified that this item did not figure in the deal, and Jensen testified that nothing was said about it when the deal was closed. The master recommended that the complainant be given credit for it and it was so decreed.

(4) The complainant testified that another item in the encumbrances, subject to which the McGraw property had been conveyed, was a judgment in favor of one Geer, amounting to \$132.33, and that he had been compelled to pay it. A satisfaction piece on this judgment was introduced in evidence. Martin also testified that this item did not figure in the exchange of the properties. The master found the complainant was entitled to a credit of this amount, and the decree so provided.

(5) It was further the testimony of the complainant that after the parties had exchanged their deeds he had paid certain interest coupons, which had been assumed by the





defendants, two of \$15.00 each and one of \$30.00; that he paid these sometime in November, 1918, including 7% interest upon them from their due dates, August 11, 1918. These notes were paid to Atwood, Pease & Loucks, and Jensen testified that the latter had told him these notes were paid in August. One or two letters were introduced in evidence, from Atwood, Pease & Loucks to the defendants, written sometime after the parties exchanged their properties, soliciting the payment of these notes. It seems clear that they were not paid at the time they fell due, in August, and that they were unpaid at the time the parties exchanged their properties. The conveyance of the Glencoe property was made subject, among other things, "to all unpaid interest on said mortgages to date." The complainant was allowed credit on this item.

(6) The complainant testified that when the exchange was made, the defendants represented that the taxes on the Wisconsin farm were \$816.70, and this amount was used in casting up the accounts by the parties at that time. He testified further that he was obliged to pay \$72.40 in excess of that amount for the taxes. It seems that the Wisconsin taxes were levied against this farm and an adjoining farm, together as one piece, and the owner of the adjoining farm had paid the taxes originally and he in turn had been reimbursed by complainant to the extent testified to. As already noted, the complainant testified that the parties agreed, at the time, that appropriate rebates were to be made in case the amounts taken for taxes proved inaccurate, while the defendant Jensen testified that the contrary was the case. Complainant was





given a credit by the master on this item.

(7) It appears from the record that at the time of the exchange of the properties, the Glencoe property conveyed by the complainant to the defendants, together with other Glencoe property, owned by the complainant and not conveyed, was covered by a blanket mortgage amounting to \$1450.00. This mortgage went to foreclosure, and for a time a receiver was in charge of all the property, and in the receiver's final report, he showed receipts from a building on one of the lots, owned by complainant and not conveyed to the defendants, amounting to \$280.00 and disbursements amounting to \$154.86, leaving a balance of \$125.14 "paid by the receiver to Jensen or for his account." This amount had been apparently retained by Jensen. The master credited the complainant with this item of \$125.14, in making up the account. In connection with this item the defendants contend that they were entitled to a credit of \$135.00 for interest paid by the receiver, as to Lot 3, and therefore properly chargeable to the complainant. This claim was disregarded by the master and we are not in a position to say that this was error. It is not shown that this charge was not taken into account by the receiver, in casting up his accounts which showed, as we understand the record, a total excess of credits over debits, as to Lot 3, amounting to \$125.14.

(8) It appears from the record that at the time of the exchange of their properties, there was a mortgage in the name of one Massey, which the testimony stated, afterwards became a judgment under the name of Olaj, for \$385.55. This item was included by the witness Martin as one of those,





subject to which the defendants took the Glencoe property. This judgment was a lien on the Glencoe property of the complainant, which he did not convey to the defendants, as well as on that property which he did convey. It seems that this judgment had been paid, and a release and satisfaction left with the defendants' counsel, and the master recommended that it should be satisfied and released of record by the defendants, so as to clear the title to the complainant's Glencoe property, still retained by him.

(3) The record also shows that at the time the parties exchanged their properties, there was another judgment against the complainant, in favor of one Wieder, for \$400.00 and complainant claimed that this was an item entering into the encumbrances, subject to which the defendants had taken the Glencoe property. Defendants' testimony was to the effect that complainant claimed that he only owed \$300.00, but that in clearing this judgment off, the defendants had been obliged to pay \$475. The master found that the judgment was for \$384.12 and that it was a lien against the complainant's Glencoe property which he had not conveyed to the defendants; that the judgment had been paid and a mortgage connected with it had been released after foreclosure proceedings and that it should be satisfied and released of record by the defendants, as to the Glencoe property still retained by the complainant, thus clearing its title. The master disregarded the contention of the defendants to the effect that they should be credited with the difference between the \$475, they claimed it had taken to clear up this matter and the \$300.00 which the complainant had represented as being involved in it. This course taken by the master seems to



subject to which the defendant has the license property.  
This defendant was a firm in the license property at the  
complaint, which he did not allow to be withdrawn, as  
well as on some property which he did own. It seems that  
this defendant had been paid, and a release had been  
left with the defendant, counsel, and the other respondents  
that it would be satisfied and released of record by the  
defendant, as he did take the title to the defendant's  
license property, will remain by him.

(3) The record also shows that at the time the  
petitioners exchanged their property, there was another judge  
sent against the complaint, in favor of the defendant, for  
\$400.00 and complaint against that title and he took away  
the title the respondent, subject to which the defendant  
had taken the license property. Defendant's property  
was so the effect that defendant signed that the only  
was \$200.00, but was in keeping with the defendant with the  
defendant and some other in his title. The other thing that  
the judgment was for \$200.00 and that is not a like against  
the complaint's license property which he did not withdraw  
in the (defendant) that the judgment had been paid and a  
notice was entered into it had been returned after defendant  
proceeding and that it would be satisfied and released of  
record by the defendant, as in the license property still  
retained by the complaint, from another title. The  
must be answered the complaint at the defendant in the effect  
that they should be satisfied with the defendant, because the  
\$400, that claim is not going to show up the other way  
the \$200.00 which the complaint had withdrawn being  
returned to it. The other thing by the other thing is

have been based on the fact that the defendants let the matter go to a foreclosure.

(10) It is contended by the complainant, and admitted by the defendants that the latter had collected \$40.00 rent on a building, located on one of the Glencoe lots owned by the complainant and not conveyed to the defendants, after the close of the receivership, incident to the foreclosure of the blanket mortgage on all the property, and accordingly, the complainant was credited by the master with this item.

(11) The defendants claimed that taxes and special assessments had been levied against the complainant's Glencoe property as a whole, including both the lots conveyed to them and those retained by the complainant, and that in order to pay taxes on their own lots, they had been obliged to pay and had paid the taxes on the lots which complainant had retained, and that on these items they were entitled to a credit in the taking of the account with the complainant amounting to \$342.31. The master allowed the defendants a credit on this item, amounting to \$299.99. We find no testimony in the record, contradicting that submitted in behalf of the defendants with regard to the payment of these taxes and special assessments to the extent claimed by them, covering the complainant's Glencoe property, title to which he retained and apparently still has. Nothing appears in the record, in the report of the master, to indicate how he arrived at the figure of \$299.99. As we read the items in the record they aggregate \$342.31 and therefore the defendants are en-



DATE: 1944-11-15  
TO: THE SECRETARY OF THE ARMY  
FROM: THE SECRETARY OF THE ARMY

(1) It is requested that the following be

admitted by the Secretary of the Army for the purpose of

being used in the construction of the new building, located on the site of the

present building, and that the same be used in the construction of the new building, located on the site of the

present building, and that the same be used in the construction of the new building, located on the site of the

(2) The following is a list of the items to be

admitted by the Secretary of the Army for the purpose of

being used in the construction of the new building, located on the site of the

present building, and that the same be used in the construction of the new building, located on the site of the

present building, and that the same be used in the construction of the new building, located on the site of the

present building, and that the same be used in the construction of the new building, located on the site of the

present building, and that the same be used in the construction of the new building, located on the site of the

present building, and that the same be used in the construction of the new building, located on the site of the

present building, and that the same be used in the construction of the new building, located on the site of the

titled to a further credit of \$42.32.

(12) The defendants further claimed that they were entitled to a credit, represented by the amount they had expended in laying a cement sidewalk and making certain repairs on a building on one of McGraw's lots, which was not conveyed to them but which was retained by the complainant, but, which was involved in the receivership, which included all the complainant's Glencoe property under the blanket mortgage hereinabove referred to. The defendants claimed that this work had been done on proper authority from the complainant and at his request, all of which the complainant denied. This item was in the same situation as all the others on which there was a conflict in the testimony. The master heard all such evidence, based his recommendations on the testimony he heard, and, after arguments before the chancellor, they have been confirmed. As the record stands, we are not in a position to disturb these findings.

As above indicated we are of the opinion that the defendants were entitled to a further credit, on the taking of the account, to the extent of \$42.32. The decree appealed from is therefore modified, in so far as it decrees that upon the accounting between the parties, there was due from the defendants to the complainant, the sum of \$371.70, and in so far as it decrees that said defendants pay the complainant said sum within five days from the date thereof, so as to make the decree find, that on the accounting there is due the complainant from the defendants, the sum of \$329.38, and so that the decrees will further be to the effect that the defendants shall pay the complainant the said amount of \$329.38, within



listed as a member of the...

(12) The... were... in a... had... in a... which was... but, which was... All the... with... that this... complaint... desired. This... which... master... the... which... are not in a...

...of the... from... upon... the... as... will... with... complaint... that the...

the time specified therein. In all other respects, the decree is affirmed.

DECREE MODIFIED AND AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.



the time specified above, is all that remains of the  
system is allowed.

REMARKS ON THE SYSTEM

REMARKS ON THE SYSTEM

HARRY W. STANDIDGE,  
Complainant and Cross Defendant,  
Appellant,

v.

CITY HALL SQUARE COMPANY,  
a corp., Defendant and Cross Com-  
plainant, Appellee.

234 I.A. 622

INTERLOCUTORY APPEAL

CIRCUIT COURT,

COOK COUNTY.

Opinion filed Apr. 30, 1924.

MR. JUSTICE THOMSON delivered the opinion of  
the court.

The complainant, Harry W. Standidge, is a practicing lawyer in the City of Chicago. The defendant is a corporation owning an office building in the City of Chicago, known as the City Hall Square Building. The law office of the complainant was in that building, on the ninth floor. The top or twenty-first floor of the building was so arranged as to be adaptable for use as club rooms, and it was under lease to a club known as the Aviation Club of Chicago. Under the terms of that lease, the premises were to be occupied by the tenant "for club rooms and for no other use or purpose." In January 1921, the complainant took over the Aviation Club lease, as he stated to the defendant at the time, "for the purpose of allowing the Lawyers' Association of Illinois to have headquarters with the Aviation Club of Chicago." The complainant was a prominent member of that Association, and, at one time, had been its president.

The lease taken over by the complainant from the Aviation Club, expired June 30, 1922. Complainant took up



100

2017-17-22

REPLY TO PETITION  
FOR WRIT OF HABEAS CORPUS

REPLY

7

IN REPLY TO PETITION  
FOR WRIT OF HABEAS CORPUS  
FILED IN CASE NO. 17-22

Citation filed Apr. 20, 1984.

ALL RIGHTS RESERVED BY THE AUTHOR

THE WORK

THE WORKS OF THE AUTHOR

REPRODUCED HEREIN IN THE NAME OF THE AUTHOR. THE AUTHOR

IS A MEMBER OF THE AMERICAN ASSOCIATION OF WRITERS

AND HIS WORK IS PROTECTED BY THE COPYRIGHT LAWS OF THE UNITED STATES

THE AUTHOR OF THE WORKS HEREIN IS IN THE POSSESSION OF

THE WORK HEREIN. THE WORK HEREIN IS IN THE POSSESSION OF

THE WORK HEREIN IS IN THE POSSESSION OF THE AUTHOR

AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS

WITHOUT THE WRITTEN PERMISSION OF THE AUTHOR. THE AUTHOR

THE AUTHOR OF THE WORKS HEREIN IS IN THE POSSESSION OF

THE WORK HEREIN. THE WORK HEREIN IS IN THE POSSESSION OF

THE WORK HEREIN IS IN THE POSSESSION OF THE AUTHOR

AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS

WITHOUT THE WRITTEN PERMISSION OF THE AUTHOR. THE AUTHOR

THE AUTHOR OF THE WORKS HEREIN IS IN THE POSSESSION OF

THE WORK HEREIN. THE WORK HEREIN IS IN THE POSSESSION OF

THE WORK HEREIN IS IN THE POSSESSION OF THE AUTHOR

AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS

with the defendant the matter of the renewal of the lease in January, at which time he wrote the defendant that "the Lawyers' Association of Illinois is growing and feels that at the end of this year it will be able to pay an increased rental. The Association also desires that the arrangement of the past year shall continue." He went on, in this letter, which was written on a letterhead of the Lawyers' Association of Illinois, to state what he was willing to pay as rental under a new lease. Complainant and defendant in due time entered into a new lease for one year, which contained the same provision as to the use of the premises which the prior lease had contained and which has been quoted above. That lease expired June 30, 1933. Shortly before the expiration of that lease, the complainant began to negotiate for another lease to run for three years. After some negotiation, a lease was drawn up, calling for the same rental as had been paid during the last six months of the prior lease, and containing the same stipulation as to the use of the premises, as had been included in the prior leases and also a clause providing for a charge to be made for elevator services to said top floor, after ten o'clock in the evening. The complainant executed this lease but it was never signed by the defendant. However, the complainant remained in possession and paid the rent stipulated for in the new lease, up to and including that for September, the latter being paid on the first day of that month.

It appears from the record that prior to the spring of 1933, the premises in question had been used for club purposes only, - by the Lawyers' Association of Illinois, The Aviation Club, the Army & Navy Club, the Associa-





tion of Commerce Club Club, the Illini Club, and similar organizations, and it further appears that dances had occasionally been conducted there by these organizations. The complainant conducted a restaurant on the premises for the serving of luncheon at noon, which was patronized by the Lawyers' Association members, and others.

It further appears that some dancing was had on the premises during the noon hour and also dances came to be held at night by the various clubs referred to. To accommodate those attending the latter, the complainant arranged with the defendant for later elevator service on the evenings the dances were held. This continued through the spring and summer of 1923, and until September. On the 4th of September the defendant notified the complainant that the dances being conducted on the premises in question must be immediately discontinued. It was the position of the defendant that the complainant was conducting public dances on the top floor of its building; that its agents had but recently obtained knowledge of the nature of the dances; that such affairs were detrimental to its property and contrary to the terms under which the complainant was in possession and that unless the dances were immediately discontinued, all evening elevator service to the 21st floor would be discontinued.

It was complainant's contention that the dances complained of by the defendant in September and which the latter then insisted should be discontinued, were the same in character as he had been conducting in the leased premises for some months, to the knowledge of the defendant and with the latter's consent and that the defendant was estopped from preventing their continuance; that he had represented to the defendant that he





could not and would not go on with another lease unless he could derive some additional revenue from the source of these dances and that with that knowledge the defendant had permitted him to continue in possession of the premises.

The complainant, Standidge, filed his bill of complaint on September 13, 1923, praying for an injunction, restraining the defendant from interfering with his occupancy of the premises in question and further that the defendant be compelled to execute and deliver to him, the lease of the premises for the period beginning July 1, 1923, which lease the complainant had executed.

In the answer filed by the defendant, it was claimed that the agreement for the new three year lease, being oral, was void under the Statute of Frauds; that the complainant was a hold-over tenant under his previous lease, and that whether considered as a tenant under the new lease, which defendant had refused to execute<sup>or</sup> as a hold-over tenant under the previous lease, the complainant had violated the provision contained in both of them, as to the use of the premises, by reason of his conducting the dances in question. The defendant also filed a cross bill in which it prayed that the complainant and cross-defendant be restrained from further conducting his dances on the premises and also praying for forfeiture and a decree for possession of the premises.

Issues were duly joined on these pleadings, and the cause was then referred to a Master, on the question of whether a preliminary injunction should be issued in favor of



and the same day as the first of the month  
in which the same was first published in the  
the same manner and the same day as the first  
and the same day as the first of the month  
in which the same was first published in the

The same day as the first of the month  
in which the same was first published in the  
the same day as the first of the month  
in which the same was first published in the  
the same day as the first of the month  
in which the same was first published in the  
the same day as the first of the month  
in which the same was first published in the

In the same day as the first of the month  
in which the same was first published in the  
the same day as the first of the month  
in which the same was first published in the  
the same day as the first of the month  
in which the same was first published in the  
the same day as the first of the month  
in which the same was first published in the  
the same day as the first of the month  
in which the same was first published in the  
the same day as the first of the month  
in which the same was first published in the  
the same day as the first of the month  
in which the same was first published in the  
the same day as the first of the month  
in which the same was first published in the

the complainant or of the defendant, as prayed by the respective parties. After extensive hearings the Master submitted his report, recommending that an injunction be issued as prayed by the complainant. Exceptions to the findings in this report were sustained by the chancellor and the latter issued a preliminary injunction as prayed by the defendant. To reverse that order, the complainant has perfected this interlocutory appeal.

Complainant contends that the record does not disclose such a motion on the part of the defendant, as may be considered a sufficient basis for the temporary injunction which the court entered. The record shows that counsel for complainant made the motion upon which the court ordered a reference to the Master, to take testimony upon the issue of "whether a preliminary injunction should be issued in favor of the complainant or the defendant." The issue was thus raised as to which of the parties was entitled to a preliminary injunction. When the Master submitted his report, recommending that a preliminary injunction be entered as prayed by the complainant, objections to that report were overruled and were ordered to stand as exceptions. The record of the order then entered recites that, on motion of the solicitors of defendant and cross-complainant, the exceptions to the Master's report were sustained, and further, on their motion, to enjoin the dances in question, it was ordered that complainant, "his agents, servants and attorneys, be and he is and they are hereby enjoined and restrained until further order of this court from advertising, conducting, maintaining, managing or operating on or in connection with the premises described as the 21st floor;



the Government of the United States, as shown in the  
 Executive Order. After a careful study of the  
 subject, the Government has decided to issue an  
 order to the effect that the Government will  
 furnish in this matter such assistance as may be  
 required in the interest of the Government and  
 the public. It is the policy of the Government  
 to provide for the most efficient and economical  
 use of the Government's resources.

The Government of the United States, as shown in the  
 Executive Order. After a careful study of the  
 subject, the Government has decided to issue an  
 order to the effect that the Government will  
 furnish in this matter such assistance as may be  
 required in the interest of the Government and  
 the public. It is the policy of the Government  
 to provide for the most efficient and economical  
 use of the Government's resources.

139 North Clark street, Chicago, Illinois, being otherwise known as City Hall square Building, any dance, dancing party or entertainment under the auspices of or under the name of the Up-In-The-Clouds-Club, or any such dance or entertainment to which the public may resort or be invited either for an admission fee or without such an admission fee or in connection with which revenue may be derived by said Harry W. Standidge; and said Standidge is enjoined from advertising said premises for public dances and from advertising for girls to resort thereto as dancers." That record is not subject to the objection urged.

Nor is the injunctive order void for uncertainty, as complainant contends. In our opinion the order is neither uncertain nor ambiguous. The order merely enjoins complainant from conducting public dances in the premises in question, either as an individual or as the Up-In-The-Clouds-Club, as to which we shall have occasion to refer later.

That the order appealed from is not mandatory, as the complainant further contends, seems entirely clear. The order does not have the effect of dispossessing the complainant but it merely prohibits his use of the premises for the holding of public dances, which, it was contended, was a use contrary to the conditions imposed on the complainant's tenancy.

It is contended that the cross-bill filed by the defendant and the prayer for relief therein contained, were not germane to the complainant's bill. Complainant did not demur to the cross-bill, nor in any other manner raise this question, but he joined issue on it and proceeded to a hearing thereon, and therefore, irrespective of the question of the





merits of the contention now made, the complainant must be deemed to have waived the question and he may not raise it now. Ackley v. Groucher, 203 Ill. 530; 21 C.J. 511. For the same reason the complainant may not now raise the question as to the verification of the cross-bill. A full hearing was had on the merits on issue joined on the cross-bill by the parties. City of Lawrenceville v. Central Illinois Public Service Co., 197 Ill. App. 58. It was not necessary for the cross-complainant to negative in its cross-bill the question of knowledge on its part, of the character of the dances complained of prior to September. That was purely a matter of defense on the part of the cross-defendant. The case of Wilson-Broadway Bldg. Corp. v. N.W. Elevated R. R. Co., 225 Ill. App. 306, and other cases cited by complainant, in contending the contrary, are not in point. The preliminary injunction order appealed from in the case at bar, was not issued on the cross-bill nor on the pleadings after issue joined, but after a full hearing on the merits of the question as to which of the parties was entitled to a preliminary injunction.

Complainant contends that the defendant, in its cross-bill, did not show that it had no adequate remedy at law as to the permanent relief prayed for in that bill, and further, that it failed to prove that it was a corporation, as alleged by it, and that it was the owner of the premises in question. As to these matters it need only be pointed out that the question of the forum in which the parties joined their issues was the choice of complainant; that the question of the permanent relief prayed for in the cross-bill is not involved on this appeal; that the complainant himself brought his bill against the defendant as a corporation; and



article of the constitution was made. The constitution was

so framed as to leave no room for doubt as to its

validity. It was, however, not until 1850 that it was

ratified. For the first time the constitution was not

made the subject of an act of legislation of the

State. A bill passed was not on the order of the

House on the 10th of March, 1850. The bill was

passed by the House on the 10th of March, 1850.

It was not necessary for the constitution to be

in its own right the subject of legislation of the

State. The subject of the constitution was not

made the subject of an act of legislation of the

State. The subject of the constitution was not

made the subject of an act of legislation of the

State. The subject of the constitution was not

made the subject of an act of legislation of the

State. The subject of the constitution was not

made the subject of an act of legislation of the

State. The subject of the constitution was not

made the subject of an act of legislation of the

constitution passed by the House, in the

House, in the House, in the House, in the House,

in the House, in the House, in the House, in the House,

in the House, in the House, in the House, in the House,

in the House, in the House, in the House, in the House,

in the House, in the House, in the House, in the House,

in the House, in the House, in the House, in the House,

in the House, in the House, in the House, in the House,

in the House, in the House, in the House, in the House,

in the House, in the House, in the House, in the House,

that he may not question the title of his admitted landlord.

It is the complainant's contention that he was a tenant of the premises in question under the lease which he had executed for the term beginning July 1, 1923, and ending in 1926 and that this lease had been taken out of the Statute of Frauds by part performance, inasmuch as he had been in possession through July and August and a part of September and the defendant had collected the rent stipulated in that lease for those months. It is the defendant's contention that the complainant is a hold-over tenant under the prior lease. For the purposes of determining the issues presented on this appeal, that question is not material. Whether complainant was in possession under one lease or the other, he was subject to the same restrictions as to the use he might make of the premises, for those restrictions were admittedly the same in both leases. The principal question on this appeal as thus presented is whether the use of the premises by the complainant, of which the defendant complains, and which it sought to enjoin, was in violation of those restrictions and whether the facts are such as to estop the defendant from so complaining as to that use and from having the use enjoined.

It is not the defendant's contention that it had been ignorant of the fact that dances had been held in the premises which were occupied by the complainant. It is admitted that dances had been held there, not only with defendant's knowledge, but that defendant had and now has no objection to the holding of dances on those premises by bona fide organizations. It appears from the record that a number of dances had been given there by the various clubs and organizations, which had occupied the premises through arrangements made by them with the complain-



Downloaded At: 11:52 11 September 2009

© 2000 Blackwell Publishers Ltd. *Journal of Internal Medicine* 247: 111–118

THE ABOVE INFORMATION IS BEING FURNISHED TO YOU FOR YOUR INFORMATION AND IS NOT TO BE USED FOR ANY OTHER PURPOSE.

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION  
PUBLISHED WEEKLY  
535 N. Dearborn Ave., Chicago, Ill. 60610  
Subscription price: \$5.00 per year in advance.  
Single copies: 15¢.  
Acceptance for mailing at special rate of postage provided for in Section 1103, Act of October 3, 1917. Authorized by Act of October 3, 1917.  
Postage paid at Chicago, Ill.  
Second-class postage paid at New York, N.Y.  
Copyright, 1970, by American Medical Association  
All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without permission in writing from the American Medical Association.

published in 1999, it is the first book to provide a comprehensive overview of the current state of research on the topic.

Downloaded from <http://ajphaphysiol.physiology.org/> by guest on September 11, 2012

Leave for home - 10:30 PM

that the important is a different matter than the

Source: For the purpose of this study, the data were collected from the following sources:

— *Continued from page 10*

1998-1999, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021-2022, 2022-2023, 2023-2024, 2024-2025, 2025-2026, 2026-2027, 2027-2028, 2028-2029, 2029-2030, 2030-2031, 2031-2032, 2032-2033, 2033-2034, 2034-2035, 2035-2036, 2036-2037, 2037-2038, 2038-2039, 2039-2040, 2040-2041, 2041-2042, 2042-2043, 2043-2044, 2044-2045, 2045-2046, 2046-2047, 2047-2048, 2048-2049, 2049-2050, 2050-2051, 2051-2052, 2052-2053, 2053-2054, 2054-2055, 2055-2056, 2056-2057, 2057-2058, 2058-2059, 2059-2060, 2060-2061, 2061-2062, 2062-2063, 2063-2064, 2064-2065, 2065-2066, 2066-2067, 2067-2068, 2068-2069, 2069-2070, 2070-2071, 2071-2072, 2072-2073, 2073-2074, 2074-2075, 2075-2076, 2076-2077, 2077-2078, 2078-2079, 2079-2080, 2080-2081, 2081-2082, 2082-2083, 2083-2084, 2084-2085, 2085-2086, 2086-2087, 2087-2088, 2088-2089, 2089-2090, 2090-2091, 2091-2092, 2092-2093, 2093-2094, 2094-2095, 2095-2096, 2096-2097, 2097-2098, 2098-2099, 2099-2100, 2100-2101, 2101-2102, 2102-2103, 2103-2104, 2104-2105, 2105-2106, 2106-2107, 2107-2108, 2108-2109, 2109-2110, 2110-2111, 2111-2112, 2112-2113, 2113-2114, 2114-2115, 2115-2116, 2116-2117, 2117-2118, 2118-2119, 2119-2120, 2120-2121, 2121-2122, 2122-2123, 2123-2124, 2124-2125, 2125-2126, 2126-2127, 2127-2128, 2128-2129, 2129-2130, 2130-2131, 2131-2132, 2132-2133, 2133-2134, 2134-2135, 2135-2136, 2136-2137, 2137-2138, 2138-2139, 2139-2140, 2140-2141, 2141-2142, 2142-2143, 2143-2144, 2144-2145, 2145-2146, 2146-2147, 2147-2148, 2148-2149, 2149-2150, 2150-2151, 2151-2152, 2152-2153, 2153-2154, 2154-2155, 2155-2156, 2156-2157, 2157-2158, 2158-2159, 2159-2160, 2160-2161, 2161-2162, 2162-2163, 2163-2164, 2164-2165, 2165-2166, 2166-2167, 2167-2168, 2168-2169, 2169-2170, 2170-2171, 2171-2172, 2172-2173, 2173-2174, 2174-2175, 2175-2176, 2176-2177, 2177-2178, 2178-2179, 2179-2180, 2180-2181, 2181-2182, 2182-2183, 2183-2184, 2184-2185, 2185-2186, 2186-2187, 2187-2188, 2188-2189, 2189-2190, 2190-2191, 2191-2192, 2192-2193, 2193-2194, 2194-2195, 2195-2196, 2196-2197, 2197-2198, 2198-2199, 2199-2200, 2200-2201, 2201-2202, 2202-2203, 2203-2204, 2204-2205, 2205-2206, 2206-2207, 2207-2208, 2208-2209, 2209-2210, 2210-2211, 2211-2212, 2212-2213, 2213-2214, 2214-2215, 2215-2216, 2216-2217, 2217-2218, 2218-2219, 2219-2220, 2220-2221, 2221-2222, 2222-2223, 2223-2224, 2224-2225, 2225-2226, 2226-2227, 2227-2228, 2228-2229, 2229-2230, 2230-2231, 2231-2232, 2232-2233, 2233-2234, 2234-2235, 2235-2236, 2236-2237, 2237-2238, 2238-2239, 2239-2240, 2240-2241, 2241-2242, 2242-2243, 2243-2244, 2244-2245, 2245-2246, 2246-2247, 2247-2248, 2248-2249, 2249-2250, 2250-2251, 2251-2252, 2252-2253, 2253-2254, 2254-2255, 2255-2256, 2256-2257, 2257-2258, 2258-2259, 2259-2260, 2260-2261, 2261-2262, 2262-2263, 2263-2264, 2264-2265, 2265-2266, 2266-2267, 2267-2268, 2268-2269, 2269-2270, 2270-2271, 2271-2272, 2272-2273, 2273-2274, 2274-2275, 2275-2276, 2276-2277, 2277-2278, 2278-2279, 2279-2280, 2280-2281, 2281-2282, 2282-2283, 2283-2284, 2284-2285, 2285-2286, 2286-2287, 2287-2288, 2288-2289, 2289-2290, 2290-2291, 2291-2292, 2292-2293, 2293-2294, 2294-2295, 2295-2296, 2296-2297, 2297-2298, 2298-2299, 2299-2300, 2300-2301, 2301-2302, 2302-2303, 2303-2304, 2304-2305, 2305-2306, 2306-2307, 2307-2308, 2308-2309, 2309-2310, 2310-2311, 2311-2312, 2312-2313, 2313-2314, 2314-2315, 2315-2316, 2316-2317, 2317-2318, 2318-2319, 2319-2320, 2320-2321, 2321-2322, 2322-2323, 2323-2324, 2324-2325, 2325-2326, 2326-2327, 2327-2328, 2328-2329, 2329-2330, 2330-2331, 2331-2332, 2332-2333, 2333-2334, 2334-2335, 2335-2336, 2336-2337, 2337-2338, 2338-2339, 2339-2340, 2340-2341, 2341-2342, 2342-2343, 2343-2344, 2344-2345, 2345-2346, 2346-2347, 2347-2348, 2348-2349, 2349-2350, 2350-2351, 2351-2352, 2352-2353, 2353-2354, 2354-2355, 2355-2356, 2356-2357, 2357-2358, 2358-2359, 2359-2360, 2360-2361, 2361-2362, 2362-2363, 2363-2364, 2364-2365, 2365-2366, 2366-2367, 2367-2368, 2368-2369, 2369-2370, 2370-2371, 23

Subject to the same conditions as the above, the following are also included in the list of subjects:

[illegible]

and the other two are the same as in the previous case.

Notwithstanding said to include all the subjects of foreign

TABLE 1. *Continued*

Downloaded from <http://ajphaphapublications.sagepub.com/> at UNIV OF CALIF SAN DIEGO on June 11, 2015

Abilardus etiam in hoc libro de unitate et diversitate philosophat. In hoc libro philosophat de unitate et diversitate philosophat. In hoc libro philosophat de unitate et diversitate philosophat.

ant. To the holding of such dances on the premises, no objection was ever raised.

But it is defendant's contention that the complainant began the practice of holding dances in these premises, advertising for girls to attend the dances, and admitting any and everybody, and that some of the dancing was far from what it should have been; that there came to be more or less drinking at these dances and that they were not at all the bona fide club function which had characterized the dances which had been given by the various clubs referred to; that these public dances and their character had been unknown to the defendant or its agents until late in the summer of 1933; that as soon as certain information about these dances came to the defendant, it caused some investigation to be made and as soon as it received reports resulting from that investigation, confirming the information it had first received, it caused complainant to be notified immediately to cease the dances.

A careful examination of the evidence in the record, which is voluminous, has led us to the conclusion that, there can be no question of the fact that the dances in question, which were conducted by the complainant in the leased premises, were public dances, and that they had the effect of making the top floor of the City Hall Square Building, on the evenings they were held, (which came to be nearly every evening) a public dance hall.

On the question of the character of these dances, the following facts are shown by the testimony. In the summer of 1933, apparently about July 1, or possibly earlier,





the complainant began to advertise for girls to attend the dances. He inserted blind advertisements in several public newspapers, which, under a heading "Girls" read as follows: "Girls, attractive for dancing evenings with best group in the City, Dearborn 4120." The telephone referred to was located on the leased premises. The complainant testified that one O'Malley (who will be referred to later) was on the premises all day to answer the telephone calls and tell the girls when to come. By means of this advertisement a number of girls were procured for the dances. No special effort seems to have been necessary to get men to attend the dances, for none is mentioned in the record, and yet there were four or five times as many men in attendance at these dances as there were girls. The financial plan under which the dances were conducted involved a charge of 10 cents to each man, upon his entrance to the premises, as a check room charge, and a further charge of 10 cents for each dance in which he took part. The men bought dance tickets at 10 cents apiece. After each dance the men handed a ticket to the girls with whom they had danced and at the end of the evening, the girls presented their tickets to the complainant and he paid them 5 cents for each ticket they turned in, keeping the balance himself. The evidence shows that for the most part, the girls had no acquaintance with the men in attendance nor the men with the girls, prior to their meeting on the floor at these dances.

The evidence not only shows that the dances which



the committee began to examine the facts of the case  
and found that the defendant had been guilty of a  
series of offenses, some of which were of a  
serious nature. The committee was of the opinion  
that the defendant should be punished for his  
crimes. It was recommended that the defendant  
be sentenced to a term of years in the  
penitentiary. The committee also recommended  
that the defendant be fined a certain sum of  
money. The committee's report was presented to  
the court, and the court accepted the  
recommendations of the committee. The defendant  
was sentenced to the penitentiary for a term of  
years, and was also fined the sum of money  
recommended by the committee.

The defendant was sentenced to the penitentiary for a term of years, and was also fined the sum of money recommended by the committee.

were conducted on the premises were public dances but it further shows that they were so regarded by everyone who had anything to do with them. The complainant maintained a "floor manager" at the dances, but he testified that "he could not watch everything," so he arranged with police headquarters to have a uniformed policeman present when the dances were going on. He explained that "the crowd was growing and we took every precaution to avoid improprieties of every kind"; that "he understood it was customary to have a uniformed policeman at dances, and I did not want precautions that were taken at any other dances, not to be taken there." The complainant testified that "if a young lady comes there and conducts herself unbecomingly, she is immediately told to leave and is forced to leave the premises."

One Allenson testified for complainant, that he was associated with the Department of Public Welfare of the City of Chicago; that complainant called up the department to inquire whether they "would inspect public dance halls" and that he was referred to the Juvenile Protective Association, which "made a specialty of investigating public dances"; that complainant then asked if the witness would come up "as he wanted someone from our office to visit the dancing;" that the witness did so and found that "the dances were conducted in a very orderly manner"; that prior to that time the last time the witness "had been to a public dance," was about five years ago.

One Larson, a police officer, of the City of Chicago, testifying for complainant, described his assign-





ment by his Commanding Officer, as "being detailed to this dance hall." Three of the girls who answered complainant's advertisement and who attended these dances regularly, during July and August 1933, except for the latter half of July when they were engaged as models at the "Marigold Fashion Show" in Chicago, were sisters, named Miller. One of them, in testifying for the complainant, as to the proper character of the dances, referred to the girls present as "the most respectable girls that I have seen in dance halls." This witness testified that her brother had attended the dances. Although she had attended most of the dances, she could remember the name of only one man with whom she had danced, other than her brother. One Carroll, testifying for complainant, testified that "the people that go to the dances there are the ordinary type of dancers that you will find in any dance hall in Chicago." This witness was another police officer of the City of Chicago who traveled beat in the vicinity of the City Hall Square Building and in explaining his presence on the 21st floor of that building, he said it was because "it was on my post, and as an officer, I am supposed to investigate all public places of amusement to see that things are going along right."

A girl named Wagner, who frequented these dances testified for complainant, that she did not know the names of any of the men there; that she did not know their names but she knew them; that all she did was to dance; that she "just danced with anybody who came up and asked her for a dance and handed her a ticket." All of this testimony was given by





complainant's witnesses. There was other testimony to the same general effect given by witnesses who testified for the defendant.

It would seem that the complainant realized that the use of the leased premises for the holding of these dances was such as did not come within the terms of his lease, and in an apparent effort to bring such use of the premises within his lease, he constituted himself a "club" which he called the "Up-In-The-Clouds-Club." That he himself so regarded this club, is indicated by his own testimony, to the effect that in a conversation he testified he had with Miss Gramer, defendant's agent who was the manager of the City Hall Square Building, "It was discussed, that being a club, I did not have to pay for a license." With further reference to this club, the complainant testified that it was organized about May 1, 1923; that its purpose was dancing; that he was the president, one O'Malley (already referred to) was secretary, and one Norman was sergeant-at-arms; that they had applications for membership from 300 or 400 young ladies; that at the time of the hearing, September 24, 1923, the club had a membership of 50 to 60. He testified that he formulated a Constitution and By-Laws for the club in May; that they were adopted at a regular meeting of the club, attended by Norman, O'Malley and himself. A copy of the Constitution and By-Laws was produced, which he testified he had typed "about the 1st of September; those are the by-laws which were made up and adopted about that time; the Up-In-The-Clouds-Club did not have any constitution or by-laws before that time; it was about the 1st of September; whether it was three or four days before or three or four days after the 1st of September, I do not know." The complainant was





notified by the defendant to discontinue these dances, by a letter dated September 4. Complainant testified further that he got out membership cards in this club in April or May and that these were the first cards they got out. That he must have been mistaken in this, was conclusively shown by the testimony of the printer of the cards, who testified for the defendant. The complainant testified that he ordered the printing of these cards at the Boston Store. He did not name any other place in this connection. One Green testified that he got orders for the printing of cards for the Up-In-The-Clouds-Club from the Boston Store; that the first order was received about June 15. A sample of this card was introduced in evidence. It was in the shape of an advertising card, reading, "Dancing in the Garden of Flowers, with Wonderful Music, and Most Beautiful Instructresses in Chicago." Then followed the times when the dances were held, the place, and the name "Up-In-The-Clouds-Club." This witness testified to further orders for these and similar cards, as having been received on June 23, July 7, and August 20. He testified that the last order he filled for this club was received on September 11, and this was a membership card, the first card of that kind ordered.

The complainant testified that so far the club had only three male members - the three officers who have already been referred to; that under the by-laws, he, as president, had the sole power to receive members or to expel them; that the by-laws of the club provided that "such dances shall be held in club rooms provided by the party who shall be its president, and such party shall pay all expenses thereof, and shall have as his own property, all funds derived therefrom, and each member waives all claim to such funds and all parts





thereof." He also testified, referring to the cards advertising the club, that he had them printed in several lots, "20,000 or 25,000 of them probably." When one of the Miller girls was on the stand, testifying for the complainant, she produced her membership card in the Up-In-The-Clouds-Club, and testified she got it "around the 1st of September."

In our opinion, the conclusion is irresistible from complainant's own testimony and the other testimony to which reference has been made in this connection, that this so-called club was in no sense such a club or organization as the Aviation Club or the Lawyers' Association, or any of the other bona fide organizations which had been occupying these premises under the complainant's lease. The Up-In-The-Clouds Club was the complainant. As already pointed out, he said so himself, in effect, in his testimony. It clearly was devised by him, in an attempt to bring the public dances he was conducting within the provisions of his lease, under which he held the premises to be used "for club rooms." In our opinion it cannot be given that effect. With the dances conducted in the manner described, the top floor of the City Hall Square Building became a public dance hall and it surely was none the less so after the complainant conducted them under the auspices of the "Up-In-The-Clouds-Club." In our opinion the situation, in this respect would not be changed even if the "Up-In-The-Clouds-Club" were considered a bona fide organization. That such a use of the premises was not within the terms of the lease and was not contemplated by the parties when their relations as landlord and tenant was entered into, seems to us to be clear.





We come now to the contention of the complainant, that the defendant knew all about these dances and the manner in which they were conducted and that it is therefore estopped to compel their discontinuance. That the various clubs which have been named as occupants and users of these premises prior to 1933, frequently held dances there, is not questioned. Complainant testified that "Miss Cramer at times discussed with me the dances up there, asking me about them and so forth, and I told her who the clubs were that held the dances." There was much testimony to the effect that when complainant was negotiating with the defendant, through Miss Cramer, for leases for further periods, he referred to the fact that he was not going to be able to meet the increased rental which was being proposed unless he was able to increase his revenue from dances. That position, however, was entirely applicable to the club dances such as had always been conducted there by the various clubs which have been referred to. It may not be said to have carried the slightest inference that complainant was proposing to raise revenue by running the premises as a dance hall open to the public. There was some testimony submitted in complainant's behalf to the effect that as early as April or May 1933, one of the cards of the Up-In-The-Clouds-Club, advertising the dances in question, was shown to Miss Cramer and that in a conversation with her in the latter part of June she remarked, "You are advertising for girls." Miss Cramer denied both of these incidents. That she could not have been shown such a card at the time testified to, and that complainant and his witnesses must have been in error in the testimony referred to, is shown by the proof that no such cards were even printed until the middle of June. That com-





plainant and his witnesses were not clear on the matters testified to, is shown by the fact that although one of them stated that he saw such a card exhibited to Miss Cramer in April or May, the complainant himself testified that he thought the witness in question was not present when he showed Miss Cramer the card.

Miss Cramer testified to her negotiations with the complainant, concerning his leasing the premises for the period beginning July 1, 1933, these negotiations being in the early part of June. On June 16, she left Chicago on a vacation and did not return until July 5. She testified that before she left she had agreed with complainant that the compensation to be paid by him for extra elevator service, at such times as it might be needed, was to be \$2.00 an hour, but that when she returned she found the leases had been made up in her absence (apparently by someone in defendant's office) with a clause that the charge for extra elevator service was to be \$2.00 an hour, up to an aggregate of \$200.00 per annum, after which such service was to be furnished without charge; That the leases, as so made up, had been signed by complainant and returned to defendant but that defendant never executed them. Complainant had testified that the clause in the lease represented the agreement as agreed to by Miss Cramer. Miss Cramer testified further that she again left Chicago on August 1, and returned on August 17, and that on that day she received an anonymous telephone call, after which she consulted defendant's night elevator man, and a few nights later she remained downtown herself and watched the people who came into the building.





One Penzer, elevator starter in the City Hall Square Building, testified that around the middle of August, he heard something which he brought to the attention of Miss Cramer; that he got his information from the night elevator man and from several tenants, and that after he heard from them, he talked with Miss Cramer about the 21st floor and the things he had heard. On cross-examination by counsel for complainant, it was brought out that this witness first talked with Miss Cramer about the middle of August and that he talked to her "about the reports of the elevator men who said it was noisy on their shift,- people making a lot of noise,- coming down intoxicated,- did not hear that kind of noise before at the other meetings,- this noise was singing and yelling." This witness testified that on Saturday night, September 1, he attended one of the dances, at Miss Cramer's request, to observe what went on and report to her. Three investigators were employed by Miss Cramer for the same purpose after the bill was filed in this case. Another witness, who was an elevator operator in another building of which Miss Cramer was the manager, was also sent to the 21st floor of the City Hall Square Building, when one of these dances was being held on September 8. These and other witnesses, - one of them a colored porter who had been employed in the premises in question by complainant - testified to improper dancing which they had seen, some sales of gin on the premises and also that they had seen considerable consumption of what they described as "hip-liquor" by some of the men present. In rebuttal, complainant testified that he had known of no drinking at these dances; that no sales of liquor had taken place, as testified to, and that the dancing had always



The second division consists of the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

divisions, forming the 1st and 2nd

been proper; and witnesses supported him in these matters. We do not regard these questions of the sale or use of liquor or improper dancing as material to a decision of the issue presented on this appeal. The important question is the manner and method of conducting these dances as public dances; advertising for girls, the promiscuous dancing of strangers at 10 cents a dance, of which the girls retained as their compensation 5 cents for every dance they danced,- and the other features of that nature to which we have referred.

Miss Gramer testified that up to August 1, 1923, she never heard the name of the Up-In-The-Clouds-Club and that she did not know dances were being conducted in the premises in question under that name; that she did not know that any dances were being regularly conducted there in the evenings or that any dances were being conducted by what she referred to as the "pay-as-you-enter-method." She further testified that when she looked into the matter, after she had returned from Minneapolis and had received the information already referred to, and remained about the building on the night of August 25, she saw about 30 girls go into the building unescorted and that she knew none of them and none of the men she saw go in; that up to this time she did not know "that the 21st floor was being used for the purpose of conducting a dance to which unescorted women came and to which there were gathered numerous men such as I saw in the corridors there while I was waiting; did not have any idea that such a thing was going on in the premises at all prior to that time." She further testified to sending Panzer and the other elevator man from another building, to the 21st floor to observe the dances and report to her; that she sent Panzer to the 21st





floor for this purpose on Saturday night, September 1; that as Monday was Labor Day she did not see him until Tuesday, September 4, and that after he reported to her she immediately notified the complainant in writing that the dances must be discontinued. In this letter she stated that "the owners of the building object very seriously to the nightly dances that are being conducted on the 21st floor and have given me orders that they must be stopped at once. The dances, I understand, are open to anyone and as nearly as I can gather are comprised mostly of the foreign element. The space was rented for club rooms and not as a dance hall." The complainant replied that the dances in question were the same as had been conducted all along, "before the present lease was entered into" which was made with full knowledge on her part that they were being conducted and were to be continued. He requested that he be not required to discontinue what he had built up at considerable expense and with defendant's knowledge. The defendant maintained its position and indicated that elevator service to the 21st floor during the evening would be cut off unless the dances complained of were stopped, and shortly thereafter complainant filed his bill seeking to restrain interference with the dances conducted by complainant, and defendant filed its cross-bill seeking to restrain the complainant from further using the premises for the carrying on of these dances, with the result already referred to.

It is our opinion that upon this record the chancellor was justified in concluding not only that the dances in question were in the nature of public dances, but that, under all the evidence, the use of the leased premises





for this purpose was not within the provisions of the lease by which complainant had possession of them for use as "club rooms"; that the Up-In-The-Clouds-Club was in fact complainant and that by use of that designation the dances were not brought within either the letter or the spirit of the lease and that prior to the time the defendant directed that the dances be discontinued (or within a reasonable time thereof), its agents were not aware of the nature of the dances and the methods by which they were carried on and that the facts involved were not such as to preclude defendant from receiving the relief prayed for and granted by the preliminary injunction appealed from.

For the reasons given the order appealed from is affirmed.

ORDER AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.



THE STATE OF NEW YORK  
 IN SENATE,  
 January 1, 1901.  
 REPORT  
 OF THE  
 COMMISSIONERS OF THE LAND OFFICE,  
 IN ANSWER TO A RESOLUTION  
 PASSED BY THE SENATE  
 APRIL 1, 1899.  
 ALBANY:  
 J. B. LEECH, STATE PRINTER,  
 1901.

ALBANY, N. Y.

RECEIVED

JAN 1 1901

38210

3806a

CEDAR PARK CEMETERY ASSOCIATION,

Appellee,

v.

VILLAGE OF BURR OAK,

Appellant.)

234 I.A. 622

INTERLOCUTORY APPEAL

FROM CIRCUIT COURT,

COOK COUNTY.

Opinion filed May 7, 1924.

MR. JUSTICE O'CONNOR delivered the opinion of the court.

On August 8, 1923, complainant filed its bill against John L. Synakiewicz, Mayor, and Andrew Bentkowski, Marshal of the Village of Burr Oak, praying that a writ of injunction be issued restraining the defendants from interfering with the maintenance and establishing of a cemetery belonging to complainant. On the day following, August 9, 1923, an order was entered awarding the writ of injunction as prayed for. On September 4th, following, the defendants filed a general demurrer to the bill and on September 10th, an order was entered giving the complainant leave to file a supplemental bill. On that date the complainant filed an amended and supplemental bill. On September 20th the defendants filed a general demurrer to the amended and supplemental bill and on the same day on motion of the complainant an order was entered enjoining the defendants from interfering with the maintenance, establishment and conduct of complainant's cemetery. From this order the defendants prayed and were allowed an appeal, but this appeal was not perfected. The



APR 2 1961

[illegible]

injunction writ was duly issued and served on the defendant. On January 4, 1934, an order was entered overruling defendants' demurrer to the amended and supplemental bill and on the same day another order was entered denying the defendants' motion to dissolve the injunction and it is to reverse this last order that the defendants prosecute this appeal.

The order awarding the writ of injunction was entered on the face of the amended and supplemental bill so that the question to be determined is whether such a cause was stated in the amended and supplemental bill as would warrant the issuance of the writ.

The allegations of the amended and supplemental bill so far as it is necessary to state them in determining the question before us are: That on May 23, 1923, the authorities of the Village of Burr Oak passed an ordinance granting to one Daniel Hewitt, his associates and assigns, or such corporation as he and his associates might thereafter organize, permission and authority to acquire, layout, conduct, maintain and operate a cemetery within the limits of the village; that Hewitt or his assigns should pay \$750.00, to the Village treasurer in consideration of the passing of the ordinance, and that it should not take effect until the same was paid; that immediately after the passage of the ordinance Hewitt paid the \$750.00 to the Village treasurer.

It is further alleged that on the day following, May 24, 1923, Hewitt on behalf of the complainant entered into a contract for the purchase of 86-2/3 acres of land lying within the corporate limits of the Village and agreed to pay \$60,000.00 therefor, and that \$10,000.00 of such purchase price had been



THE UNIVERSITY OF CHICAGO  
CHICAGO, ILLINOIS 60637  
U.S.A.  
TEL: (312) 937-1234  
FAX: (312) 937-1234  
WWW: WWW.CHICAGO.EDU

[illegible]

THE SECRETARY OF THE ARMY AND NAVAL DEPARTMENT  
WASHINGTON, D. C.  
JANUARY 10, 1900  
SIR:  
I have the honor to acknowledge the receipt of your letter of the 7th inst. in relation to the matter of the appointment of a chaplain to the 1st Cavalry, and in reply to inform you that the same has been referred to the proper authorities for their consideration.  
Very respectfully,  
J. H. COOPER, Secretary.

[illegible]

paid on such contract.

It is further alleged that on July 7, 1923, complainant, Cedar Park Cemetery Association was incorporated under the laws of the State of Illinois, with an authorized capital of \$75,000.00 preferred stock and 250 shares of common stock of no par value; that the purpose of the corporation was to establish and maintain a cemetery; that all of the capital stock had been subscribed for and \$53,000.00 paid in upon the subscription to the preferred stock; that on July 21, 1923, Hewitt assigned all his right, title and interest in and to the contract for the purchase of the land to the cemetery association; that thereupon it became obligated to pay the \$50,000.00 remaining due on the purchase price of the land; that the complainant for the purpose of establishing and maintaining a cemetery upon the land entered into a contract with the Cyclone Fence Company whereby the latter agreed to build a fence around the land for \$8,000.00; that it entered into another contract with a granite company for the erection of an entrance to the cemetery at an agreed cost of \$2200.00; that it entered into another contract with the same company for the erection of a memorial monument for the sum of \$35,000.00.

It is further alleged that the land in question was located within the limits of the village between Halsted street on the east, Racine avenue on the west, 125th street on the north and 127th street on the south; that there was a burial made in the cemetery July 23, 1923, after a license was regularly issued; that afterwards the officials of the village threatened to enter upon the cemetery land and exhumate the body and to prevent persons who were then engaged in construction work from doing so.



For the full text of this article, please go to <http://www.oxfordjournals.org>

CLAIMANT'S WIFE: MARY ANN WILSON, 1000 10th St., N.E., Washington, D.C.

Copyright © 2003 by John Wiley & Sons, Inc.

Source: U.S. Census Bureau, *Current Population Reports*, 1960, 1970, 1980, 1990, 2000, 2010, 2015, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 2682, 2683, 2684, 2685, 2686, 2687, 2688, 2689, 26

addition, you'll receive our 100% money-back guarantee.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

© 2006 by The McGraw-Hill Companies, Inc.

THE UNIVERSITY OF CHICAGO LIBRARY

systems will be used and the distribution of the test questions will be

1. The first group of people who are interested in the results of the study are the researchers themselves. They want to know how well the study was conducted and whether the results are reliable and valid. They also want to know how the study was funded and whether there were any conflicts of interest.

100-443887-100

It is hereby certified that the foregoing is a true and correct copy of the original as the same appears from the records of the Board of Education of the City of New York.

THE FOLLOWING INFORMATION RELATES TO THE ABOVE-REFERENCED MATTER:

001-88-10072-10071 Page 89 of 100

Other 2 are small, also shown in the same area as other

THESE ARE THE RESULTS OF THE ANALYSIS OF THE DATA OBTAINED FROM THE EXPERIMENTAL STUDY.

100-443887-100

... ..

It is further alleged that after the order was entered awarding a writ of injunction in accordance with the prayer of the original bill, which order was entered August 8, 1923, the village authorities passed an ordinance declaring it to be unlawful for any firm or corporation to conduct a cemetery within the limits of the village or within one mile thereof and providing a penalty for a violation of the ordinance of not less than \$100.00 or more than \$200.00; that on the same day the village officials passed another ordinance which required the removal of any body theretofore buried within the village limits, and provided further that any person who failed to remove any dead body so buried, upon conviction should be fined not less than \$100.00 or more than \$200.00.

It is further alleged that prior to the passage of the two ordinances last referred to, complainant was engaged in building fences around the cemetery and improving it by laying out roads; that it had sold lots, the purchase price of which aggregated \$50,000.00; that it had entered into contracts of approximately \$150,000.00 for improvements; that after the passage of such ordinances the defendants threatened to go upon the land and prevent the complainant from doing any further work in constructing the improvements or from burying any dead bodies and threatened to exhume the body that had theretofore been buried.

It is further alleged that the cemetery was surrounded on all sides by farm lands not under cultivation; that there were only six houses widely scattered within a quarter of a mile to the north of the property; that on the west there was no house within a mile; that the nearest house to the south was one-half



Notes

It is further alleged that after the same was

entered regarding a visit to the residence in connection with

the report of the original bill, which was entered

March 5, 1917, the Village Committee passed an ordinance

declaring it to be unlawful for any person or corporation to

employ a woman within the limits of the Village of Salem

and also to prevent and providing a penalty for a violation of the

ordinance of not less than \$100.00 or more than \$500.00

and the same day the Village Committee passed another ordinance

which provided for removal of all dogs from the Village except those

in the village limits, and provided further that any person

who failed to remove any dog from the Village, upon conviction

might be fined not less than \$100.00 or more than \$500.00.

It is further alleged that prior to the passage of the

two ordinances last mentioned, no ordinance was passed in

relation thereto except the ordinance and resolution of 1915

and that during that year and later, the persons who at

that time resided in the Village, and who at that time were

found to be unlawfully employed, to the satisfaction of the

other the majority of such persons the ordinance was passed

and that the same was passed and declared to be valid and

lawful and in compliance with the provisions of the Village

and that further and otherwise as stated in the last two

paragraphs of this report.

It is further alleged that the Village Committee

and on all sides by such persons and other individuals that there

were many who were unlawfully employed within the Village at a time

so the work of the Village Committee was not done.

of a mile away; that there was a farm house to the east about 100 feet from the land which was the only house on that side of the property within one-half mile; that the land was not swampy; that there was no river or stream running through it from which the surrounding territory drew its water supply; that the establishment of the cemetery would not injure or endanger the health of any one living near the cemetery; that the two ordinances last referred to were null and void as to complainant's property.

The prayer was that the defendants be enjoined from interfering with complainant in the construction work on the cemetery and in conducting the same. The amended and supplemental bill was verified.

Complainant contends that the appeal should be dismissed on the ground that this court has no jurisdiction to pass upon the validity of an ordinance of a village. While we have heretofore denied the complainant's motion to dismiss the appeal which determines the question adverse to the complainant, yet we think we ought to say that complainant misapprehends the law. This court has ample authority to pass on the validity of ordinances and we have done so in numerous cases. There seems to be some confusion in the briefs and argument that when it is said that an ordinance is void it means that it is unconstitutional. An ordinance may be invalid or void because the legislature has not authorized the municipality to legislate upon the particular subject. This involves no constitutional question, but only a construction of the statute, and of course, this court has jurisdiction in all cases on such questions. But whether we have jurisdiction to





pass upon constitutional questions involving the validity of an ordinance in an appeal from an interlocutory order, it is unnecessary for us to determine (cases holding that this court has such power are: Hill v. Tarbell, 81 Ill. App. 373; See Ohio Washed Coal Co. v. Coal Belt Ry. Co., 116 Ill. App. 163 and Mobile & Ohio R. R. Co. v. Fraser, 188 Ill. App. 310,- while the contrary is held in Patterson v. Danton, 201 Ill. App. 382,) because we are clearly of the opinion that the defendants are estopped from questioning the right of complainant to construct and maintain the cemetery in question.

The record discloses that on May 23rd, 1923, the village authorities passed an ordinance granting to Daniel Hewitt, his associates and assigns, or to such corporation as they might organize, authority to layout, conduct and maintain a cemetery on the property in question upon the payment of \$750.00. This payment was made, contracts entered into by Hewitt, complainant organization organized and the Hewitt interests assigned to it. In these circumstances, defendants ought not to be permitted to prevent the complainant from completing and carrying on the cemetery after it had authorized the establishment of it. So far as the record shows the conditions were not changed. There is no claim made that the construction and maintenance of this cemetery will be any detriment to the health, safety and comfort of the inhabitants. On the contrary, in the amended and supplemental bill, it is alleged that the health, safety and comfort of the inhabitants will in no way be impaired. The demurrer obliges the court to assume that to be true. A court of equity has inherent power to prevent the defendant from destroying complainants' cemetery





when the threatened action of the defendants is against all equity and good conscience.

A further point made by the defendants seems to be that while the ordinance granted to Hewitt the authority to construct and maintain a cemetery within corporate limits of the village it provided that the cemetery was to be located on ten or more acres of land lying between 125th and 127th streets, adjacent to Racine avenue, in the Village of Burr Oak, yet the defendant cemetery consists of more than 66 acres. What the facts are as to how much land was authorized to be used for cemetery purposes, we are unable to say; that question may develop upon the hearing of the cause, but on the record before us, we are unable to say that complainant in improving the 66 2/3 acres violated the terms of the ordinance.

The order of the Circuit Court of Cook County is affirmed.

AFFIRMED.

TAYLOR, P.J. AND THOMSON, J. CONCUR.





191 - 28848

GARCIA SUGAR CORPORATION,  
a corporation, Appellee,

vs.

SES-NOON & COMPANY,  
a corporation, Appellant.

3807a  
234 I.A. 623

APPEAL FROM

MUNICIPAL COURT  
OF CHICAGO.

MR. PRESIDING JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

In a first class action in assumpsit, commenced in the Municipal Court of Chicago on June 10, 1921, plaintiff, after a verdict in its favor rendered on June 8, 1923, recovered a judgment for \$20,760, on July 2, 1923, against defendant for certain sugar sold and delivered, and defendant appealed.

By the verdict the jury found the issues against defendant, and assessed plaintiff's damages at the sum of \$20,760, "and interest at 5% to date of verdict." Prior to the entry of the judgment and after the court had overruled defendant's motions for a new trial and in arrest of judgment, plaintiff filed a written motion asking the court to include in the judgment the sum of \$2,895.03 (representing interest at 5% per annum upon \$20,760, from August 23, 1920, to the date of the verdict) and to enter judgment against defendant in the total sum of \$23,655.03. The motion was denied and plaintiff has assigned cross-errors in this appellate court on the ruling.

To plaintiff's original statement of claim defendant, on July 20, 1921, filed an affidavit of merits, sworn to by Abraham J. Minkus, its president. On February 10, 1923, by leave of court, plaintiff filed an amended statement of claim, to which defendant, by Minkus, on March 2nd, filed an affidavit



ESD A-102

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

2

\*Through a multi-media  
collaboration

© 1999 by the American Psychological Association, 0893-3200/99/\$12.00 DOI: 10.1037/0893-3200.13.4.571

[illegible]

all material before 1950 is also in 1950 and 1951 format.

doi:10.1017/S002229240000209 Printed in the United Kingdom

© 1999 Blackwell Science Ltd *Journal of Internal Medicine* 245: 395–401

... ..

Abstracts of the 1995 Annual Meeting of the American Psychological Association, Washington, DC, August 12-16, 1995.

© 2000 Blackwell Science Ltd *Journal of Internal Medicine* 247: 399–405

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

Revised: 11/20/00, 1/20/01, 5/20/01, 8/20/01, 11/20/01, 2/20/02, 5/20/02, 8/20/02, 11/20/02, 2/20/03, 5/20/03, 8/20/03, 11/20/03, 2/20/04, 5/20/04, 8/20/04, 11/20/04, 2/20/05, 5/20/05, 8/20/05, 11/20/05, 2/20/06, 5/20/06, 8/20/06, 11/20/06, 2/20/07, 5/20/07, 8/20/07, 11/20/07, 2/20/08, 5/20/08, 8/20/08, 11/20/08, 2/20/09, 5/20/09, 8/20/09, 11/20/09, 2/20/10, 5/20/10, 8/20/10, 11/20/10, 2/20/11, 5/20/11, 8/20/11, 11/20/11, 2/20/12, 5/20/12, 8/20/12, 11/20/12, 2/20/13, 5/20/13, 8/20/13, 11/20/13, 2/20/14, 5/20/14, 8/20/14, 11/20/14, 2/20/15, 5/20/15, 8/20/15, 11/20/15, 2/20/16, 5/20/16, 8/20/16, 11/20/16, 2/20/17, 5/20/17, 8/20/17, 11/20/17, 2/20/18, 5/20/18, 8/20/18, 11/20/18, 2/20/19, 5/20/19, 8/20/19, 11/20/19, 2/20/20, 5/20/20, 8/20/20, 11/20/20, 2/20/21, 5/20/21, 8/20/21, 11/20/21, 2/20/22, 5/20/22, 8/20/22, 11/20/22, 2/20/23, 5/20/23, 8/20/23, 11/20/23, 2/20/24, 5/20/24, 8/20/24, 11/20/24, 2/20/25, 5/20/25, 8/20/25, 11/20/25, 2/20/26, 5/20/26, 8/20/26, 11/20/26, 2/20/27, 5/20/27, 8/20/27, 11/20/27, 2/20/28, 5/20/28, 8/20/28, 11/20/28, 2/20/29, 5/20/29, 8/20/29, 11/20/29, 2/20/30, 5/20/30, 8/20/30, 11/20/30, 2/20/31, 5/20/31, 8/20/31, 11/20/31, 2/20/32, 5/20/32, 8/20/32, 11/20/32, 2/20/33, 5/20/33, 8/20/33, 11/20/33, 2/20/34, 5/20/34, 8/20/34, 11/20/34, 2/20/35, 5/20/35, 8/20/35, 11/20/35, 2/20/36, 5/20/36, 8/20/36, 11/20/36, 2/20/37, 5/20/37, 8/20/37, 11/20/37, 2/20/38, 5/20/38, 8/20/38, 11/20/38, 2/20/39, 5/20/39, 8/20/39, 11/20/39, 2/20/40, 5/20/40, 8/20/40, 11/20/40, 2/20/41, 5/20/41, 8/20/41, 11/20/41, 2/20/42, 5/20/42, 8/20/42, 11/20/42, 2/20/43, 5/20/43, 8/20/43, 11/20/43, 2/20/44, 5/20/44, 8/20/44, 11/20/44, 2/20/45, 5/20/45, 8/20/45, 11/20/45, 2/20/46, 5/20/46, 8/20/46, 11/20/46, 2/20/47, 5/20/47, 8/20/47, 11/20/47, 2/20/48, 5/20/48, 8/20/48, 11/20/48, 2/20/49, 5/20/49, 8/20/49, 11/20/49, 2/20/50, 5/20/50, 8/20/50, 11/20/50, 2/20/51, 5/20/51, 8/20/51, 11/20/51, 2/20/52, 5/20/52, 8/20/52, 11/20/52, 2/20/53, 5/20/53, 8/20/53, 11/20/53, 2/20/54, 5/20/54, 8/20/54, 11/20/54, 2/20/55, 5/20/55, 8/20/55, 11/20/55, 2/20/56, 5/20/56, 8/20/56, 11/20/56, 2/20/57, 5/20/57, 8/20/57, 11/20/57, 2/20/58, 5/20/58, 8/20/58, 11/20/58, 2/20/59, 5/20/59, 8/20/59, 11/20/59, 2/20/60, 5/20/60, 8/20/60, 11/20/60, 2/20/61, 5/20/61, 8/20/61, 11/20/61, 2/20/62, 5/20/62, 8/20/62, 11/20/62, 2/20/63, 5/20/63, 8/20/63, 11/20/63, 2/20/64, 5/20/64, 8/20/64, 11/20/64, 2/20/65, 5/20/65, 8/20/65, 11/20/65, 2/20/66, 5/20/66, 8/20/66, 11/20/66, 2/20/67, 5/20/67, 8/20/67, 11/20/67, 2/20/68, 5/20/68, 8/20/68, 11/20/68, 2/20/69, 5/20/69, 8/20/69, 11/20/69, 2/20/70, 5/20/70, 8/20/70, 11/20/70, 2/20/71, 5/20/71, 8/20/71, 11/20/71, 2/20/72, 5/20/72, 8/20/72, 11/20/72, 2/20/73, 5/20/73, 8/20/73, 11/20/73, 2/20/74, 5/20/74, 8/20/74, 11/20/74, 2/20/75, 5/20/75, 8/20/75, 11/20/75, 2/20/76, 5/20/76, 8/20/76, 11/20/76, 2/20/77, 5/20/77, 8/20/77, 11/20/77, 2/20/78, 5/20/78, 8/20/78, 11/20/78, 2/20/79, 5/20/79, 8/20/79, 11/20/79, 2/20/80, 5/20/80, 8/20/80, 11/20/80, 2/20/81, 5/20/81, 8/20/81, 11/20/81, 2/20/82, 5/20/82, 8/20/82, 11/20/82, 2/20/83, 5/20/83, 8/20/83, 11/20/83, 2/20/84, 5/20/84, 8/20/84, 11/20/84, 2/20/85, 5/20/85, 8/20/85, 11/20/85, 2/20/86, 5/20/86, 8/20/86, 11/20/86, 2/20/87, 5/20/87, 8/20/87, 11/20/87, 2/20/88, 5/20/88, 8/20/88, 11/20/88, 2/20/89, 5/20/89, 8/20/89, 11/20/89, 2/20/90, 5/20/90, 8/20/90, 11/20/90, 2/20/91, 5/20/91, 8/20/91, 11/20/91, 2/20/92, 5/20/92, 8/20/92, 11/20/92, 2/20/93, 5/20/93, 8/20/93, 11/20/93, 2/20/94, 5/20/94, 8/20/94, 11/20/94, 2/20/95, 5/20/95, 8/20/95, 11/20/95, 2/20/96, 5/20/96, 8/20/96, 11/20/96, 2/20/97, 5/20/97, 8/20/97, 11/20/97, 2/20/98, 5/20/98, 8/20/98, 11/20/98, 2/20/99, 5/20/99, 8/20/99, 11/20/99, 2/20/100, 5/20/100, 8/20/100, 11/20/100, 2/20/101, 5/20/101, 8/20/101, 11/20/101, 2/20/102, 5/20/102, 8/20/102, 11/20/102, 2/20/103, 5/20/103, 8/20/103, 11/20/103, 2/20/104, 5/20/104, 8/20/104, 11/20/104, 2/20/105, 5/20/105, 8/20/105, 11/20/105, 2/20/106, 5/20/106, 8/20/106, 11/20/106, 2/20/107, 5/20/107, 8/20/107, 11/20/107, 2/20/108, 5/20/108, 8/20/108, 11/20/108, 2/20/109, 5/20/109, 8/20/109, 11/20/109, 2/20/11

— 1911 —

Figure 1. The effect of the concentration of the polymer on the  $\alpha$ -transition temperature of the polymer.

941100

© 2000 Blackwell Science Ltd *Journal of Internal Medicine* 247: 399–405

U.S. GOVERNMENT PRINTING OFFICE: 1967 O 340-000

© 2001 Blackwell Science Ltd, *Journal of Internal Medicine* 250: 361–368

of merits. On plaintiff's motion this was stricken from the files and on April 2nd, defendant, by Minkus, filed another affidavit of merits. This was also stricken, and on April 30th, defendant, by Minkus, filed a third affidavit of merits to plaintiff's amended statement of claim, which the court allowed to stand, and on the defense as therein alleged the cause came on for trial.

In plaintiff's amended statement of claim it is alleged that on March 16, 1930, one Marceline Garcia entered into a written contract with defendant for the sale to it of certain sugar. The contract is set out in full and it is signed by Mueller-Vox Brokerage Co. and by another brokerage firm, and is also signed, as being "accepted," by the seller and the buyer. It sets forth that on said date there has been sold to See-Moon & Company, of Chicago, Illinois, for the account of Marceline Garcia, of New York City, 22,000 bags of granulated sugar of a certain grade, packed in double bags of 100 pounds net weight each, and to be delivered, 2,000 bags during May, 1930, and 5,000 bags during each of the months of June, July, August and September, 1930, "at \$16.10 per 100 pounds, f.o.b. railway cars, Marine City, Michigan." Among its provisions are that payment shall be "net cash at sight, payable in New York or Chicago funds on presentation of bill of lading and duplicate invoices;" that the seller's obligation as to delivery is complete upon presentation of bills of lading; and that the "seller reserves the right to reduce this contract twenty per cent (20%) if sugars are not produced at Marine City, Michigan." It is further alleged in the statement of claim in substance that the seller proceeded in the fulfillment of his contract; that thereafter, on August 7, 1930, the seller and the buyer (defendant) entered into a further agreement modifying said original contract wherein the seller paid to defendant the sum of \$35,300, being the amount claimed by





defendant to have been lost by it by reason of the failure of the seller to deliver all of the sugar in the quantities and at the times specified, and the parties agreed to a reduction of 30% of the total amount of sugar provided for in the contract, in accordance with the reduction clause thereof, - the seller agreeing, after said reduction and the deduction of all sugar theretofore delivered, to deliver the balance of 7,225 bags of sugar to defendant upon the terms and at the price contained in the original contract; that in consideration thereof the defendant agreed to accept the balance of 7,225 bags and pay said price of \$16.10 per 100 pounds; that thereafter, pursuant to said modification, the seller delivered to defendant the 7,225 bags in cars, from time to time from August 11, 1920 to and including September 23, 1920; that all of these last mentioned shipments and deliveries were paid for in cash on delivery "with the exception of two (2) certain shipments, to-wit: the shipments of August 23rd, consisting of 800 bags in car C. R. I. & P. #42115, \$12,880, and 800 bags in car F. R. R. #26295, \$12,880, which said two (2) cars the defendant requested Marceline Garcia to deliver to it without the payment of cash on delivery, but on credit to be paid for by said defendant within a reasonable time after the delivery thereof, and that said Marceline Garcia did so deliver the said two (2) cars upon credit upon the dates aforesaid;" that defendant, on October 2, 1920, paid to the seller on account of said two cars the sum of \$5,000, leaving an unpaid balance thereon of \$20,760; that thereafter, on June 9, 1921, the seller, for a consideration, assigned and transferred to plaintiff all of his right, title and interest in and to said account and the balance so due him, - plaintiff becoming the owner thereof; and that, although a reasonable time has long since elapsed, defendant has not paid said balance or any part thereof, and has refused so to do, and has "unreasonably and vexatiously delayed





the payment thereof," wherefore plaintiff brings suit for said balance of \$30,760, plus interest at 5% per annum, as by statute provided.

In the 2nd amended affidavit of merits, filed April 20, 1933, defendant admitted the making of the contract of March 18, 1930, with Marcelino Garcia, but alleged that it (defendant) had also entered into seven other written contracts with Garcia for the purchase from him of approximately 42,000 bags of sugar. And it is further alleged in substance that defendant had no agreement on August 7, 1930, with Garcia, whereby he was to deliver 7,225 bags of sugar to it, or under which he paid defendant \$35,200 because of any failure on his part to make deliveries, or under which any modification of the contract of March 18, 1930, was made; that on the contrary Garcia, on July 30, 1930, and previous thereto, stated that it was impossible for him to fulfill his contracts with defendant, and would take advantage of the reduction clause in said contract, and authorized defendant to purchase in the open market 17,600 bags of sugar for a price not to exceed \$18.10 per 100 pounds, thereby limiting his damage to \$2 per bag on the 17,600 bags, totaling \$35,200, which said 17,600 bags were to, and did, apply on all the contracts between him and defendant; that defendant did not agree on August 7th, or at any other time, that it would accept 7,225 bags as a balance due under said contracts; that Garcia did not ship to defendant in the two cars mentioned 1,600 bags on August 23rd to apply on the contract sued upon or upon any of said contracts, nor did defendant receive said 1,600 bags under said contract or contracts, nor did Garcia extend any credit to defendant therefor, nor did defendant on October 2, 1930, or at any other time, pay to Garcia the sum of \$5,000 to apply on the purchase price of the two cars, nor did it at any time agree that a balance of \$30,760 was due to Garcia



1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

The above information was furnished to the Bureau on May 19, 1968.

Very truly yours,  
Special Agent in Charge

Enclosure

1. The first part of the report is a general statement of the purpose and scope of the study. It states that the purpose of the study is to determine the effect of the new tax law on the income of individuals. The scope of the study is limited to the income of individuals who are subject to the new tax law.

1. The first of these is the fact that the  
2. second of these is the fact that the  
3. third of these is the fact that the  
4. fourth of these is the fact that the  
5. fifth of these is the fact that the  
6. sixth of these is the fact that the  
7. seventh of these is the fact that the  
8. eighth of these is the fact that the  
9. ninth of these is the fact that the  
10. tenth of these is the fact that the

1. The first of these is the fact that the  
2. second of these is the fact that the  
3. third of these is the fact that the  
4. fourth of these is the fact that the  
5. fifth of these is the fact that the  
6. sixth of these is the fact that the  
7. seventh of these is the fact that the  
8. eighth of these is the fact that the  
9. ninth of these is the fact that the  
10. tenth of these is the fact that the

1. The first step is to identify the problem or goal. This involves understanding the current situation and what needs to be achieved.

for said cars; that defendant is not indebted either to Garcia or to plaintiff in said sum, or in any sum, as a balance due on the two cars, for the reason that the 1,600 bags of sugar were not purchased from Garcia but from Mueller-Fox Brokerage Co. on August 23, 1930, who then had the possession thereof and represented itself to be the sole owner in reply to defendant's queries; that Mueller-Fox Co. then acted as general agent for Garcia and also for numerous other persons, firms and corporations and at the same time bought and sold sugar on its own account as a merchant; that on making said purchase from Mueller-Fox Co. defendant relied upon the latter's representations, and agreed to pay it for the 1600 bags the sum of \$25,760, and, on October 1, 1930, paid it on account the sum of \$5,000, leaving a balance of \$20,760, which said balance "this defendant credited Mueller-Fox Co., on the then existing indebtedness due See-Boon & Co. from Mueller-Fox Co. in accordance with the agreement made at the time of the purchase of said sugar;" that at that time and previous thereto Mueller-Fox Co. was indebted to defendant in the sum of \$35,671.66, upon which it had paid defendant \$12,000, leaving a balance due of \$23,671.66; that in making said purchase defendant "did not know and had no means of knowing that Mueller-Fox Co. was merely acting as an agent in the transaction" for Garcia; that defendant believed that Mueller-Fox Co. was the owner of the sugar and dealt with it as a principal in the transaction and not as an agent; and that many months after said purchase defendant for the first time learned that Garcia claimed to have an interest in the sugar.

On the trial Abraham J. Kinkus was called as a witness by plaintiff under section 33 of the Municipal Court Act and he was examined at considerable length. Five other witnesses testified in plaintiff's behalf, including Harry M. Mueller, of Mueller-Fox Co., and Carlos Garcia, president of plaintiff, and





who in 1930 was in charge of the New York office of Marcelino Garcia. On behalf of defendant said Minkus and Ben D. Manaster, respectively president and manager of defendant, testified, as did three other witnesses. Many letters and documents were introduced by the parties. Arthur E. Bike, an employee of Mueller-Fox Co., was called as a witness by both. The main issue of fact, which the jury were called upon to determine, was whether the two cars, containing the 1600 bags of sugar in question, were delivered to defendant by Mueller-Fox Co. as agents for said Marcelino Garcia, the owner, to apply upon the balance of the sugar coming to defendant, under the contracts between it and Garcia, or whether said cars were received by defendant from Mueller-Fox Co. as a principal, - defendant in good faith believing Mueller-Fox Co., to be the owner, and in good faith applying the money received by it from the subsequent sale of the sugar to the liquidation of a debt due it from Mueller-Fox Co. On this issue the evidence is conflicting. Counsel for defendant earnestly contend that the verdict is manifestly against the weight of the evidence, and counsel for plaintiff, with equal earnestness, argue to the contrary. No useful purpose will be served in entering into a discussion of the evidence contained in this voluminous record. Suffice it to say that we have carefully reviewed the abstract, many parts of the record, and the briefs and arguments of respective counsel, and are of the opinion that the verdict is fully sustained by the evidence. And we cannot say that, under the evidence, the verdict is contrary to the law, as also contended.

Defendant's counsel further contend that the court erred in admitting certain evidence offered by plaintiff over defendant's objection. The contention has reference to the admission of plaintiff's exhibit 40, being a portion of a so-called "service ledger," kept by plaintiff's attorneys in the





usual course of their business. It was offered for the purpose of more definitely fixing the disputed dates of two conversations which took place in the office of plaintiff's attorneys in Chicago between Minkus and one of defendant's attorneys and Mueller and one of plaintiff's attorneys. The specific objection raised to the introduction of the exhibit in the trial court is not the same as is now here made. It is the rule that an objection is limited to the grounds specified and does not cover others not specified. (First Nat. Bank v. Garry, 195 Ill. App. 513, 518, and cases there cited. Had the objections now made been raised in the trial court, and been considered well taken, they probably could have been removed by the introduction of further proof. (Crawford v. Chicago, B. & Q. R. Co., 112 Ill. 314, 320; Espen v. Hinchliffe, 131 Ill. 468, 472.) Counsel's contention also has reference to the admitting in evidence over objection of plaintiff's exhibits 41, 42 and 43. These were respectively certain affidavits of merits, all sworn to by Minkus, filed in the cause by defendant on July 20, 1921, and on March 2nd and April 2nd, 1923, and were offered for the purpose of impeachment of certain portions of Minkus testimony, and not upon the theory that the affidavits presented defenses inconsistent with the defenses set forth in the final affidavit of merits filed by defendant and upon which the case went to the jury. Such affidavits were admissible for purposes of impeachment or as admissions against interest. (22 Corpus Juris 337; Seaps v. Eichberg, 43 Ill. App. 375, 385; Stevenson v. Avery Coal and Mining Co., 143 Ill. App. 397, 401; People's Bank v. Wood, 207 Ill. App. 602, 604.) We do not think that the trial court, in admitting in evidence any or all of the exhibits referred to, committed any reversible error.

Complaint is made of a portion of the court's oral instructions to the jury. From a reading of the entire charge we think that the jury were fairly and properly instructed and





that they could not have been misled by the particular portion complained of. (Greenburg v. Childs & Co., 242 Ill. 110, 115; Zeman v. North American Union, 263 Ill. 304, 313.) Furthermore, it does not appear that the portion of the charge now complained of was specifically objected to at the time. (Pecararo v. Halberg, 246 Ill. 95, 97.)

Regarding the cross-errors assigned, we do ~~not~~ think that the court should have included in the judgment interest on the amount of the verdict, \$20,760, at the rate of 5 per cent from August 23, 1920, \$2,895.03, as contended by plaintiff's counsel, but we do think that the court should have included interest in the judgment for a substantial amount. While defendant's president testified that the bills of lading for the two cars, containing the 1,600 bags of sugar, were received by defendant about August 23, 1920, and while by the terms of the contract payment was to be made "net cash \* \* on presentation of bill of lading and duplicate invoices," still it appears from the testimony of Carlos Garcia and certain correspondence that a short time was given defendant in which to pay for the sugar. Furthermore, plaintiff alleged in its amended statement of claim that defendant requested that the two cars of sugar should be delivered to it "without the payment of cash on delivery, but on credit to be paid for within a reasonable time after the delivery thereof," and that Marcelino Garcia did deliver the cars "upon credit." There is evidence to the effect that commencing about 30 days after the delivery of the sugar frequent demands were made from time to time on defendant to pay said balance, and on April 13, 1921, Marcelino Garcia wired defendant, threatening suit if payment of said balance of \$20,760 was not shortly made. All these demands, however, proved unavailing and on June 10, 1921, the present action was commenced. The jury by their verdict allowed interest on the amount assessed "at 5% to date of





verdict," but they did not say from what date interest should be computed, nor did they make any computation of interest. In a note in 25 L. R. A. (N.S.) 311, where the power of the court to amend a verdict by adding interest is discussed, it is said: "When the jury by their verdict allow interest without computing it, but it can be ascertained by a mathematical calculation, either from the data given in the verdict itself, or furnished by the pleadings or other records of the case, it is held, by the great weight of authority, that the court may make the computation." (See, also, Clapp v. Martin, 33 Ill. App. 438; Lauman v. Clark, 73 Ill. App. 653, 663; McKinney v. Armstrong, 97 Ill. App. 808, 813.) In the case of Meyer v. Johnson, 122 Ill. App. 87, 92, it appears that the jury assessed plaintiff's damages at a certain sum "with interest at 5% from July 2, 1904," and it was held proper for the court upon entry of judgment to compute the interest and give judgment for the sum named in the verdict plus the interest as computed. But, under the pleadings, the evidence and the language of the verdict in the present case, the court would not have been justified in arbitrarily including in the judgment interest on the amount of the verdict from August 23, 1920, the jury not having indicated the date from which interest should commence to run. (Falcon Engineering Co. v. Wright, 171 Ill. App. 521, 525.) Yet we think that interest in a substantial amount should have been included in the judgment, especially in view of the holdings in the case of Minnesota Mutual Life Ins. Co. v. Welsh, 131 Ill. App. 103. In that case suit was brought on a life insurance policy for \$1,000, and the jury returned a verdict assessing plaintiff's damages at \$1,000, "with interest at the rate of 5% from date of death," and the judgment, entered by the trial court, followed the verdict, directing the recovery from defendant of the sum of \$1,000 "with interest, in form as aforesaid by the jury assessed." Inasmuch as the



[illegible]

policy by its terms made the \$1,000 payable upon the receipt and approval by the company of proofs of death, the appellate court for this district held that the verdict, and the judgment following it, as to the amount of interest to be allowed, were incorrect. The appellate court further held that it was apparent from the verdict (as it is from the verdict in the present case) that the jury intended to allow to plaintiff interest on the amount of the damages assessed; that it was apparent from the record that plaintiff should be allowed interest from the date when proofs of death were furnished to defendant, if such date appeared, but which date was not contained in the record - the bill of exceptions merely showing that proofs of death were furnished before suit <sup>was</sup> brought; that the record showed the date on which the suit was brought; that interest at the rate of 5 per cent per annum from that date was less than plaintiff was entitled to recover; that the trial court, therefore, might properly have computed the interest from the date the suit was brought and rendered a judgment for the principal sum assessed, plus said interest; and that the appellate court had power to render such judgment as the trial court ought to have rendered. Accordingly, the appellate court in the Polish case entered the judgment that the trial court should have rendered. So, in the present case, we think that we should reverse the judgment entered by the Municipal Court on July 2, 1923, and enter a judgment here for the amount of the damages as assessed by the jury, \$30,700, plus interest thereon at the rate of 5 per cent per annum from the date of the commencement of the suit (June 10, 1921) to the date of the verdict (June 8, 1923), substantially two years' interest and amounting to \$2,076, making the total judgment to be entered here of \$32,776, upon which judgment interest should also be allowed at the same rate from July 2, 1923.





Therefore, the judgment of the Municipal Court will be reversed and judgment entered here in favor of the plaintiff and against the defendant, See-Moon & Company, for the sum of \$22,836, together with interest thereon at the rate of 5 per cent per annum from July 2, 1923. All costs in this appellate court will be paid by said defendant.

REVERSED AND JUDGMENT HERE IN FAVOR OF PLAINTIFF.

Fitch and Barnes, JJ., concur.





3808a

LEV (LION) HOMESTEAD ASSOCIATION,  
a corporation,  
Complainant and Appellee,

vs.

MINNIE R. TAYLOR and CALVIN F. TAYLOR,  
Defendants,

MINNIE R. TAYLOR,  
Appellant.

234 I.A. 623

APPEAL FROM

CIRCUIT COURT,  
COOK COUNTY.

MR. PRESIDING JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

By this appeal Minnie R. Taylor seeks to reverse a decree of foreclosure, entered by the Circuit Court of Cook County on June 21, 1923. The court overruled defendants' exceptions to the master's original and supplemental reports, approved those reports as well as the receiver's report, and found that the equities of the cause were with complainant; that there was due to it from Minnie R. Taylor the sum of \$1,046.43, together with interest thereon at the legal rate from July 31, 1922 (date of the master's original report); that there was also due to it \$135 for stenographer's fees, \$161.25 for master's fees, and \$165 for solicitors' fees (which said three amounts were taxed as costs); and that the total sum due was \$1,553.75. And the court decreed that defendants pay to complainant said total sum within 10 days, together with costs of suit, and in case of default in payment that the mortgaged premises be sold, etc.

On May 1, 1912, Minnie R. Taylor borrowed from complainant \$1100, and to evidence the indebtedness executed and delivered to it her bond, pledging her eleven (11) shares of stock in the complainant association as collateral security,



(

157

RECEIVED BY THE DIRECTOR, FBI, WASHINGTON, D. C., 10/10/54

RECEIVED

*Journal of Management Education*

10. The following information is for informational purposes only and is not intended to be used for any other purpose.

U.S. DEPARTMENT OF AGRICULTURE

Source of Information: Author's personal collection.

SECRET

©1999 by Cambridge University Press. This is a hard-copy reprint of the original article.

Approved this 14th day of May 1906 at the County Clerk's Office.

100-443887-100

2025 Release under E.O. 14176, April 14, 2010

[illegible]

100-443887-100

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

Copyright © 1999 by John Wiley & Sons, Inc.

1940-1941

REPRODUCED FROM THE ORIGINAL IN THE NATIONAL ARCHIVES AT COLLEGE PARK, MARYLAND

1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 26

THE UNIVERSITY OF CHICAGO

Non-Indigenous communities and members of the *chilte* community

Revised: 11/11/2011

Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923

and agreeing to pay said sum in weekly payments, etc., and further agreeing to pay all fines, assessments, etc., and in the event of litigation, all expenses and an attorney's fee. To further secure the payment of the bond she and her husband, Calvin F. Taylor, on the same day executed and delivered to complainant the mortgage in question on certain improved real estate in Cook County, Illinois. The mortgage was duly recorded. It was provided therein, inter alia, that in case of waste or non-payment of taxes or assessments or failure to keep the premises insured, or in the event of a breach of any of the covenants, then the whole of the principal sum and interest should immediately become due and payable and the mortgage might immediately be foreclosed and the mortgagee might enter and collect the rents; that a receiver might be appointed with usual powers; that the sum of \$165 might be included in any decree for solicitor's fees; and that all moneys advanced for insurance, taxes, assessments and other liens might be paid and become a part of the principal indebtedness. Prior to June 7, 1917, Mrs. Taylor made two payments on the loan, aggregating \$300, but no further payments thereafter. On December 4, 1918, complainant filed a bill in said Circuit Court (case No. B-48205) to foreclose the mortgage, and in January, 1919, Joseph Gurin, president of complainant association, was appointed receiver of the premises and he took possession. Before any evidence had been heard, the case was called for trial in September, 1919, and, complainant not appearing, was dismissed for want of prosecution. Complainant's solicitors did not learn of the dismissal until after the term had passed and their subsequent efforts to have the order set aside were unsuccessful. Apparently, Gurin continued in possession of the premises, and on July 15, 1920, complainant filed the present bill (case No. B-65186) to





foreclose the mortgage. On July 24, 1920, Curin was again appointed receiver, and from this interlocutory order Mrs. Taylor appealed to this appellate court, assigning as error that he had been appointed without proper evidence and solely upon the allegations of a bill which was not verified. On October 2, 1920, counsel for complainant filed a written confession of error and the order appointing Curin as receiver was reversed, but he, apparently, continued in possession of the premises. Whether he was again appointed receiver by order of court does not appear from the praecepta record before us, but his report as receiver does appear, and in the decree appealed from mention is made of this report "made by the receiver heretofore appointed by the order of this (Circuit) court."

The present bill, filed July 15, 1920, contains the usual allegations of foreclosure bills. And it is alleged that defendants abandoned the premises, allowed the building to become unsanitary and untenable, and failed to pay taxes, insurance, water rates, etc.; and that it became necessary that repairs be made on the building to prevent it being condemned and torn down. After defendants' answer and complainant's replication had been filed, the cause was referred to a master to take proofs and report conclusions.

On January 28, 1922, the verified report of the receiver was filed. He therein states that he was first appointed receiver of the premises on January 24, 1919, under the first foreclosure bill; that he then found the premises abandoned by defendants and unfit for occupation; that he proceeded to make necessary repairs to the building and expended the sum of \$651.53, and also paid all back taxes and water rates and renewed the insurance, expending \$83.23, making the total expenditures \$734.76; that up to the date of the report he had received in rents the total sum





of \$644; and that the excess of his expenditures over receipts was \$90.76. An itemized statement of receipts and expenditures is attached to the report, from which it appears that he had rented one flat in the building for 7 months at \$12 per month and for 18 months at \$14 per month, and had rented the other flat to "J. Curin" for over 28 months at \$10 per month. Objections were filed to the report by defendants, to the effect that the receiver had not been authorized by any order of court to make the repairs, and that the receiver had rented one flat to "J. Curin," his son, at a cheaper rental than to the other tenant. Defendants did not urge that the repairs made were not necessary. Subsequently the receiver's report and the objections were referred to the same master to whom the cause had previously been referred.

On December 28, 1922, the master's report, together with the somewhat lengthy transcript of the evidence taken before him, was filed. He recommended that a decree of foreclosure be entered. He found, inter alia, that on March 15, 1922, there was due to complainant \$1,046.43; that the receiver had produced proper vouchers for all of his expenditures; that although he may have made repairs without a specific order of court yet they were necessary and inured to the benefit of the premises; that the objections to the receiver's report should be overruled because not sustained by the evidence; and that complainant's charge of \$165 for solicitor's fees (so limited in the mortgage) was reasonable. The master stated the account of the amount due complainant, in which appear the charges for continuation of an abstract, \$6.50, stenographer's fees \$135 (necessarily employed), master's fees \$146.25 and complainant's solicitor's fee, \$165. He also stated the receiver's account, showing a deficiency due him of \$90.76. The receiver was not allowed any amount as fees





for his services. The master further found that "no sufficient and proper tender of the amount due was ever made by either of the defendants and that complainant rightfully refused whatever tender was made and that defendants had ample time to forestall these proceedings and thus avoid costs but failed so to do." It appears that at the commencement of the hearing the solicitor for defendants stated that he would "make a tender of \$1100 in payment of all debts due on the mortgage," whereupon complainant's solicitor refused the tender upon the ground that the amount was insufficient to meet the indebtedness due upon the mortgage "together with the necessary moneys advanced by the complainant to preserve the property, the taxes and so forth." It does not appear that defendants actually tendered \$1100 in money, or its equivalent, or that they then or at any subsequent time properly tendered an amount sufficient to satisfy the indebtedness due upon the mortgage and the moneys expended for necessary repairs, taxes, insurance, etc. and the costs and solicitor's fees then incurred.

Before the court passed upon the exceptions to the master's report the cause was re-referred to the master for the purpose of his finding, upon the evidence already heard, the rental value of the premises, and on May 1, 1923, he filed his supplemental report, in which he found that prior to the appointment of the receiver in December, 1918, the entire building, when last occupied, had rented for \$14 per month; that the receiver has since rented it for \$24 per month; and that \$24 per month was the fair and reasonable rental value of the premises. For making this report the master charged \$15 as a fee.

Several points are made by counsel for Mrs. Taylor as grounds for a reversal of the decree. It is first contended that, after the making of the tender of \$1100, "the bill was





without equity," as the amount tendered was in excess of what was properly due. To this we cannot assent, and we agree with the master's finding, confirmed by the court, that no sufficient or proper tender of the total amount due was ever made. It is also contended that the amount allowed in the decree for the repairs made by the receiver cannot be sustained because not authorized by a previous order of court. Again we cannot assent. In Atwood v. Knowlson, 91 Ill. App. 265, 267, it is said: "The various sums paid out by the receiver were paid without any order or permission of the court. Under the rule once obtaining he could not be allowed anything for sums thus expended. But under the later and more liberal rule, it is permitted the receiver to show to the court that the sums thus expended without direction of the court were in the interest of the receivership estate and beneficial to it, and that the cost was not unreasonable, whereupon the court may, in its discretion, allow such expenditures." In Heffron v. Milligan, 40 Ill. App. 291, 294, it is stated that a receiver's action "may be approved by the court where repairs are made without permission if the sum expended is very small, or if it be shown that he acted in good faith and for the best interests of the property intrusted to him, or that it was necessary to act immediately in order to prevent damage." (See, also, 34 Cyc. 281.) Under the facts disclosed in the present record it sufficiently appears that the sums expended for repairs were reasonable and of benefit to the property, that the receiver in making the repairs acted in good faith, and that the repairs were necessary to prevent the building being torn down by the authorities of the Town of Cicero where the building was located. Inasmuch as it appears that the repairs were made by the receiver while he was acting as such by appointment under the first foreclosure bill of December 4, 1910, which was dismissed in September, 1919, it is argued that the receiver's acts in making



without equity," as the court observed in its opinion in *Smith v. Smith*, 100 N. 100, 101, 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

the repairs must be considered as the acts of complainant. Even if they be so considered, it is the law that in exceptional cases a mortgagee in possession may be allowed for necessary repairs and improvements made in good faith and for the benefit of the property and to prevent waste. (McConnel v. Holobush, 11 Ill. 61, 70; McCumber v. Gilman, 13 Ill. 381, 382.) We think this is a somewhat exceptional case. Furthermore, the dismissal of the bill under which a receiver is appointed does not discharge him from an accounting, and he is subject to the court's orders as to such accounting until he is finally discharged (34 Cyc. 453.) And we are of the opinion under all the facts in evidence, that \$24 a month, as found by the master, was the fair and reasonable rental value of the premises as repaired, and that complainant should not be charged with any sums for rent of the building beyond what the receiver actually received from the tenants, as shown by his report. As to the complaint concerning the receiver leasing to his son the upper flat (consisting of four rooms) at \$10 per month, while the lower flat (consisting of five rooms) was leased to other parties at \$14 per month, we do not find that it has any substantial merit. It appears that the son moved into the flat when the building was in its dilapidated condition and remained there while the repairs were being made and assisted in the work of making the repairs, for which he made no charge. There is no evidence of favoritism or fraud in leasing the flat to him, or that the monthly rental received from him was too low, or that the flat could have been leased to another at a higher rental.

Counsel also contends that the court erred in allowing complainant solicitors' fees to the amount of \$165, and that the charges of the master for his services are excessive. As to the solicitor's fees the amount allowed was fixed in the mortgage at that sum and it certainly has been earned. And we cannot say





that the master's charges are excessive.

Finding no reversible error in the record, the decree of the Circuit Court is affirmed. Because of the insufficient abstract filed by appellant's counsel an additional abstract was filed by opposing counsel. The cost of this additional abstract will be taxed against appellant.

AFFIRMED.

Fitch and Barnes, JJ., concur.



that the master's business was necessary.  
 Finding an opportunity to go to the  
 of the master's house in the morning, he went  
 and found that the master's house was empty.  
 was filled with people. The master of the house  
 was not at home. He was not at home.

He was not at home.

263 - 28921

ANNA JENSEN,  
Appellant,

vs.

WILLIAM R. HENRIKSEN,  
Appellee.

3809  
234 I.A. 1623  
APPEAL FROM

MUNICIPAL COURT  
OF CHICAGO.

MR. PRESIDING JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

In an action of forcible detainer, commenced in the Municipal Court of Chicago on May 15, 1923, to recover the possession of a store, No. 5143 West Chicago Avenue in said city, there was a trial without a jury resulting in the court finding defendant not guilty and entering judgment against plaintiff for costs, and she appealed.

It was admitted on the trial that plaintiff was the owner of the premises and that defendant was still in the possession thereof, which he occupied as an office for his real estate business. Plaintiff occupied the second floor of the building as a residence. Defendant originally took possession of the store under a written lease, dated May 15, 1918, signed by Andrew Jensen, as lesser, and wherein the store was leased to defendant for a term of five years ending May 14, 1923, at a monthly rental of \$25, payable on the 15th day of each and every month. After the execution of the lease Andrew Jensen died and plaintiff became the owner of the building. Among the usual covenants contained in similar leases were that the "lessee agrees to surrender the possession of said premises to said lesser upon the termination of the term," and "further agrees, during the occupancy of said demised premises, to maintain and keep the same in as good condition and repair as the same shall



ESTABLISHED

1880 - 1881

1881 - 1882

1882 - 1883

1883 - 1884

1884 - 1885

1885 - 1886

1886 - 1887

1887 - 1888

1888 - 1889

1889 - 1890

1890 - 1891

1891 - 1892

1892 - 1893

1893 - 1894

1894 - 1895

1895 - 1896

1896 - 1897

1897 - 1898

1898 - 1899

1899 - 1900

1900 - 1901

1901 - 1902

1902 - 1903

1903 - 1904

1904 - 1905

1905 - 1906

1906 - 1907

1907 - 1908

1908 - 1909

be upon taking possession thereof, natural wear, injury by fire, or other inevitable accident excepted." About the middle of November, 1920, defendant told plaintiff he "was figuring on fixing up the place" and said he would like to have an option or privilege of having the term of the lease extended. A few days later plaintiff called at defendant's office, and, after further conference, signed the following endorsement on the lease, after it had been written thereon by defendant:

"Chicago, Ill., November 23rd, 1920.

For and in consideration of one dollar and other good and valuable considerations, privilege is hereby given lessee for an extension of the within lease from May 15, 1922 to May 14th, 1923, at a monthly rental of Forty (\$40) Dollars.

(Signed) Anna Jensen (Seal)

Devisee and sole beneficiary  
under the will of Andrew Jensen,  
deceased."

Both parties testified that plaintiff did not receive the "one dollar" mentioned. Plaintiff testified that she at the time asked him what that dollar meant, and that he replied that "it didn't mean anything and that he wrote it just as a matter of form." Defendant testified that shortly after the signing of the endorsement he fixed up the store, employed a carpenter to put on a chair rail and make other changes, had some painting and decorating done, had some new electric light fixtures put in, all at a total expense of about \$345, and that he spent additional money for a rug and new furniture. Defendant also testified that some time thereafter plaintiff asked him if he would cancel the endorsement on the lease and he refused to do so. Early in April, 1923, plaintiff notified defendant that she had appointed one Stephens, located at No. 155 N. Clark Street, Chicago, as her agent for the building, and requested defendant to pay rent to him, and on April 14th defendant sent a check to Stephens for the rent for the last month of the lease, beginning April 15th and ending May 14th,





1923, which check Stephens cashed, but defendant did not then, or at any time prior thereto, notify plaintiff or Stephens that he (defendant) would exercise his said privilege or option, as endorsed on the lease, and continue as a tenant of the store for the additional term of five years. On May 7, 1923, plaintiff caused to be personally served upon defendant a written notice, notifying him that his tenancy in the store "will terminate on May 14, 1923," and directing him to surrender possession to plaintiff on that day. Still defendant did not notify plaintiff that he would exercise the said privilege or option, and on the day following the expiration of the term of the lease, May 15, 1923, plaintiff, finding defendant still in possession of the store, commenced the present action. Defendant testified that on May 14th, the last day of the term, he wrote a check for \$40, payable to Stephens, and also a letter and envelope addressed to Stephens, and gave all to a salesman in defendant's employ to mail. The salesman testified that he put the letter and check in the envelope, which was properly addressed, and, in the presence of defendant's brother, dropped the letter in a mail box on the same day, and that he read the letter, which was an ordinary letter saying "please find check." Stephens testified that he never received the check or letter.

We are of the opinion that the finding and judgment for defendant are contrary to the evidence and to the law and cannot be sustained. When the trial judge entered the finding he stated in substance that in his opinion defendant exercised the privilege or option given him by the endorsement when he made said repairs, etc. to the store, plaintiff living upstairs at the time and knowingly allowing the same to be made. It is to be noticed that under the provisions of the lease plaintiff was not obligated to make any repairs during the term; that defendant made the repairs, etc. to the store or office at a





time when the lease had yet about 2-1/2 years to run; and that they were of such a character as would be of benefit to him and of little, if any, benefit to plaintiff. But, waiving the question that there was no consideration for plaintiff's agreement to give defendant the privilege of having the lease extended, as contended by plaintiff's counsel, the mere fact that defendant incurred expense in making the repairs did not amount to an acceptance of the privilege or bind him to pay rent as a tenant for the additional five years. (Corbett v. Cranwhite, 239 Ill. 9, 17.) By the endorsement on the lease he was given the right of election whether he would remain as plaintiff's tenant for the additional five years at the increased rental. (Vincent v. Laurent, 165 Ill. App. 397, 402.) But he did not notify plaintiff before the original term had expired that he had so elected. (Pearce v. Turner, 150 Ill. 116.) And she was entitled to a reasonable notice so she could know whether or not she had a tenant for the store after May 14, 1923. (18 Am. & Eng. Ency. Law, 2nd Ed., 692; Larmon v. Jordan, 56 Ill. 304; Vincent v. Laurent, supra.) And it appears that even after May 7, 1923, when plaintiff, by notice, directed defendant to surrender possession to her at the expiration of the term, May 14th, he did not notify her that he had elected to exercise the said privilege or option. And we do not think that the mere mailing of the letter and check on May 14th, if it was mailed, amounted even to a belated election by defendant that he would be bound as a tenant for the additional five years at the increased rental.

For the reasons indicated the judgment will be reversed with a finding of facts, and judgment will be entered here that plaintiff recover of defendant, William R. Henrickson, the possession of the premises described in the complaint, and, by virtue of the provisions of Section 110 of the Practice Act, as





construed in Gage v. Skinner, 186 Ill. 491, 496, the cause will be remanded to the Municipal Court for the issuance of a writ of restitution and execution for costs.

REVERSED WITH JUDGMENT HERE AND  
REMANDED WITH DIRECTIONS.

Fitch and Barnes, JJ., concur.



THESE ARE THE RESULTS OF THE RESEARCHES OF THE  
 COMMITTEE ON THE HISTORY OF THE UNITED STATES  
 IN THE YEAR 1876. THE RESULTS OF THE RESEARCHES  
 OF THE COMMITTEE ON THE HISTORY OF THE UNITED STATES  
 IN THE YEAR 1876. THE RESULTS OF THE RESEARCHES  
 OF THE COMMITTEE ON THE HISTORY OF THE UNITED STATES  
 IN THE YEAR 1876.

THESE ARE THE RESULTS OF THE RESEARCHES OF THE

263 - 28921

**FINDING OF FACTS.**

We find as facts in this case that defendant, William R. Henricksen, did not at any time prior to May 15, 1923, exercise the privilege or option given him by plaintiff, by virtue of the endorsement on the lease made on November 23, 1920, of having said lease extended for a period of five years to May 14, 1926, and that on May 15, 1923, and at the time of the trial, defendant was unlawfully withholding possession of the premises described in the complaint from plaintiff.



1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786 2787 2788 2789 2790 2791 2792 2793 2794 2795 2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808

in the complaint from Elizabeth.

NATHAN COHEN, Appellee,

vs.

DENNIS J. EGAN, Bailiff  
of the Municipal Court  
of Chicago, Appellant.

38 10a  
234 I.A. 223  
APPEAL FROM

CIRCUIT COURT,  
COOK COUNTY.

MR. PRESIDING JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

On December 7, 1922, plaintiff commenced an action in replevin in the Circuit Court of Cook County against Dennis J. Egan, Bailiff of the Municipal Court of Chicago, and Sheridan Park Garage, to recover possession of a certain automobile, "together with all of the accessories and equipment thereon and thereto belonging." The sheriff took the property under the writ and delivered the same to plaintiff. After a trial without a jury the court found the issues for plaintiff and that the right to the possession of the property was in him and assessed his damages at one cent. Judgment was entered against defendants on the verdict, and said Egan, bailiff, etc., perfected the present appeal.

One of Egan's pleas to plaintiff's declaration was that he was entitled to the possession of the property replevied because he took it under a writ of attachment for the sum of \$423.95, sued out from said Municipal Court on November 28, 1922, at the suit of Kramer Hosiery Company against D. J. Mahany, that Mahany and not plaintiff was the owner of the property at the time, and that the same was subject to attachment.

The following facts in substance were disclosed upon the trial: During September, 1922, plaintiff was in the business of loaning money on automobiles, and for convenience used the



• **1991**

100

WILLIAM, DAVID & ALBERT  
AT THE UNIVERSITY OF  
CALIFORNIA, BERKELEY  
CALIFORNIA

82

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

[illegible][illegible]

The following table is submitted for information:

printed forms of notes and chattel mortgages then in use by the Paramount Auto Exchange. On September 25, 1922, said D. J. Mahany borrowed money from plaintiff and, to secure the loan, signed and delivered to him three chattel mortgage notes, aggregating \$500, all dated September 25th - one for \$100 due on October 25th, another for \$100 due on November 25th, and a third for \$300, due on December 25th, 1922. Printed forms of notes giving the name of the payee as "Paramount Auto Exchange" were used, and over said name on the first two notes the name "Nathan Cohen" was stamped in larger type by means of a rubber stamp. Through inadvertence the third note was not so stamped. To secure these three notes Mahany on the same day signed a chattel mortgage, which was on a printed form then used by the Paramount Auto Exchange, and its name appeared on the mortgage and over which was stamped in larger type by a rubber stamp the name "Nathan Cohen." It is stated in the mortgage that Mahany, in consideration of \$500, sells and conveys to Nathan Cohen the automobile (describing it) "together with all equipment thereon, or which may hereafter be added thereto," and it appears that the mortgage was acknowledged by Mahany by attorney in accordance with the statute, and was recorded on September 25, 1922. It described the three notes mentioned. It provided that it should be lawful for the mortgagor to retain possession of the automobile until default in the payment of the notes or any one of them. It further provided that, if any writ be levied on the automobile, or if the mortgagee for any cause should feel insecure, etc., all unpaid sums of money secured thereby should, at the mortgagor's option, become immediately due and payable, and he should have the right to take immediate possession of the automobile, and sell it upon giving legal notice of the time and place of the sale, and from the proceeds





pay all expenses, etc. and the amount remaining unpaid on the indebtedness, and return any balance remaining to the mortgagor. The first note due on October 25th was paid, but the second note due on November 25th was not paid. From the bailiff's return on the attachment writ it appears that he took possession thereunder of the automobile, together with "1 spot light, 2 bumpers and 1 extra tire and cover," and that Mahany, defendant in the attachment proceedings, could not be found upon due inquiry. While the automobile and said equipment were in the possession of the bailiff they were taken by the sheriff under the replevin writ. It was admitted on the trial that the automobile and equipment, taken by the bailiff, belonged to Mahany, subject to the mortgage, and that the same property was taken by the sheriff from the bailiff. It was also admitted that the bailiff would not deliver the property to plaintiff on the latter's demand. At the conclusion of plaintiff's evidence, defendants for the first time and in open court tendered to plaintiff the sum of \$405.56 in full payment of the amount due on the mortgage, but the tender was refused. Defendants relied upon the attachment writ and said tender for their defense. It was shown that the attachment proceedings were regular, that the attachment suit was commenced on November 28, 1922, three days after the unpaid chattel mortgage note for \$100 became due, that the bailiff took possession of the automobile and equipment on December 1, 1922, and that subsequently the attachment was sustained and a judgment in rem entered. At the close of all the evidence defendants moved for a finding in their favor but the motion was denied.

The main point relied upon by counsel for Egan, Bailiff, etc., for a reversal of the judgment is that, the debt being the principal thing to be considered and defendants





having at the trial tendered to plaintiff the amount due him under the chattel mortgage, the finding and judgment of the trial court should have been against the plaintiff in this replevin proceeding. We cannot agree with counsel. It is clearly established by the evidence that plaintiff had a chattel mortgage on the automobile and equipment in question, securing three notes in the aggregate sum of \$500; that the mortgage was properly acknowledged and was recorded on September 23, 1922; and that the second note of \$100 matured on November 25, 1922, and was not paid, and thereby the mortgagor had made default. The legal title to the property in question then was vested in the plaintiff and he was entitled to reduce it to his possession. (Pike v. Colvin, 67 Ill. 237; Simmons v. Jenkin, 76 Ill. 479; Whittemore v. Fisher, 132 Ill. 243.)

And the fact that the property had been attached by a creditor of the mortgagor on November 23, 1922, could not deprive plaintiff of his right to the possession and retention of the property. (Pike v. Colvin, *supra*.) And where by the terms of the present mortgage, plaintiff, as mortgagee, was authorized to take possession, if the property should be levied upon or if at any time he should feel insecure, said attachment could not defeat his right to reduce the property to his possession. Only by his permission or non-action could the property be sold under the attachment proceedings. (Durfee v. Grinnell, 69 Ill. 371.) And a subsequent tender by the mortgagor, or those claiming under him did not, at law, operate to revert the title in the mortgagor. (Blain v. Foster, 35 Ill. App. 297; Alexander v. Meyenberg, 112 Ill. App. 233.) In Jones on Chattel Mortgages, 2nd Ed., sec. 632, it is said: "At common law a tender made after forfeiture does not operate to revert the title in the mortgagor, so as to enable him to recover at law. The mortgagee is not at law





bound to receive the amount due and restore the property. If the mortgagor has any right it is merely an equitable right of redemption. A tender of the debt after forfeiture does not re-vest the title in the mortgagor. Nothing short of acceptance of the tender will have that effect and extinguish the legal title of the mortgagee in the property mortgaged." In Pike v. Colvin, 87 Ill. 227, 231, it is said: "If, however, the mortgagee reduces the property to possession before a levy, or if he takes it from the officer after the levy, in such case, the execution creditor's only remedy is by garnishes process against the mortgagee. He can, by that means, reach any surplus in his hands, but cannot deprive him of the property or its possession, because he has acquired it legally under a contract which is lawful. What we have here said applies to cases when the possession, by the terms of the mortgage, remains with the mortgagor, and where it provides that the mortgagee shall sell the property and pay the surplus to the mortgagor."

And we do not think there is any merit in the further contentions of counsel (1) that the judgment should be reversed because plaintiff's name did not definitely appear as mortgagee in the mortgage or as payee in any of the notes, thereby rendering said mortgage and notes void for uncertainty as against the attaching creditor, and (2) that the finding and judgment should at least have been for defendants as to the equipment items mentioned in the bailiff's return on the attachment writ.

The judgment of the Circuit Court is affirmed.

AFFIRMED.

Fitch and Barnes, JJ., concur.





3811a

STEVE BOLLECK,  
Appellee,

vs.

JOE KALAMAN and MRS.  
JOE KALAMAN,  
Appellants.

APPEAL FROM MUNICIPAL COURT

OF CHICAGO.

234 I.A. 624

MR. PRESIDING JUSTICE GRIDLEY  
DELIVERED THE OPINION OF THE COURT.

In an action to recover commissions for procuring, as alleged, a purchaser for defendants' house at No. 5134 Princeton avenue, Chicago, the court found the issues in plaintiff's favor and assessed his damages at \$400. Judgment was entered for this amount against defendants and they appealed.

Plaintiff, an employee of an elevated railroad company and not engaged in business as a real estate broker, was the only witness called in his behalf. The testimony of defendants was corroborated in essential particulars by the parties who ultimately purchased the house, Mr. and Mrs. Lemple, and by another witness. The evidence discloses that early in April, 1922, plaintiff had a conversation with defendants in which they said they were desirous of selling the house and further said in substance that if he would get a purchaser for the same, at a price net to them of \$5,300, they would give him as commissions all he could obtain from the purchaser over and above that net price; that on April 5, 1922, plaintiff procured defendants' signatures to a paper in which said verbal agreement was set forth in writing; that about this time negotiations for the purchase of the house were commenced by the Lemples with defendants direct, the former having learned from sources other than plaintiff that the house was for sale; and that these negotiations continued during the month and thereafter and finally resulted in the Lemples purchasing the house from



SECRET

1

THE SECRETARY OF THE ARMY

WASHINGTON, D.C.

1944

TO THE SECRETARY OF THE ARMY

FROM THE SECRETARY OF THE ARMY

1944

THE SECRETARY OF THE ARMY

WASHINGTON, D.C.

In the matter of the proposed amendment to the existing law, the Secretary of the Army has the honor to acknowledge the receipt of your letter of the 15th instant, and in reply to inform you that the same has been forwarded to the proper authorities for their consideration. The Secretary of the Army is also in receipt of your letter of the 16th instant, and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

Very respectfully,  
The Secretary of the Army

Enclosed for the Secretary of the Army are two copies of the proposed amendment to the existing law, and a copy of the report of the Committee on the subject. The Secretary of the Army is also in receipt of your letter of the 15th instant, and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

The Secretary of the Army is also in receipt of your letter of the 16th instant, and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

Very respectfully,  
The Secretary of the Army

defendants in the month of May, 1922, for \$5,700, the papers being drafted in the office of a real estate broker named Matthews, and the consummation of the transaction not having been brought about by plaintiff's efforts. Defendants' main defense on the trial was that plaintiff was not the procuring cause of the sale, and, after a review of all the testimony we think it clearly appears that he was not. And we are of the opinion that the finding and judgment of the trial court were manifestly against the weight of the evidence, and that the judgment should be reversed.

REVERSED WITH FINDING OF FACT.

Fitch and Barnes, JJ., concur.



The following is the result of the work of the  
 committee in the office of the Secretary of the  
 Department of the Interior, and the results of the  
 investigation of the various matters connected with  
 the same. The committee has been very fortunate  
 in obtaining the assistance of the various  
 departments of the Government, and the results  
 of the same are here presented. The committee  
 has been very fortunate in obtaining the assistance  
 of the various departments of the Government, and  
 the results of the same are here presented. The  
 committee has been very fortunate in obtaining  
 the assistance of the various departments of the  
 Government, and the results of the same are  
 here presented. The committee has been very  
 fortunate in obtaining the assistance of the  
 various departments of the Government, and the  
 results of the same are here presented.

The following is the result of the work of the  
 committee in the office of the Secretary of the  
 Department of the Interior, and the results of the  
 investigation of the various matters connected with  
 the same. The committee has been very fortunate  
 in obtaining the assistance of the various  
 departments of the Government, and the results  
 of the same are here presented. The committee  
 has been very fortunate in obtaining the assistance  
 of the various departments of the Government, and  
 the results of the same are here presented. The  
 committee has been very fortunate in obtaining  
 the assistance of the various departments of the  
 Government, and the results of the same are  
 here presented. The committee has been very  
 fortunate in obtaining the assistance of the  
 various departments of the Government, and the  
 results of the same are here presented.

300 - 28958

## FINDING OF FACT.

We find as an ultimate fact in this case that plaintiff was not the procuring cause of the sale of defendants' house to the Lemples.



July 12, 1912

1912-1913

My dear Sir,  
 I have the pleasure to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration.

I am, Sir, very respectfully,  
 Yours faithfully,  
 [Signature]

3812a

EMIL OLSON,  
Appellee,

vs.

ANGELOS PAULATOS,  
Appellant.

234 I.A. 324  
APPEAL FROM

CIRCUIT COURT OF  
COOK COUNTY.

MR. PRESIDING JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

In an action of trespass for assault and battery the jury found defendant guilty and assessed plaintiff's damages at \$1,500. Plaintiff remitted \$400 from the verdict and the court, after overruling defendant's motion for a new trial and in arrest of judgment, entered judgment against defendant for \$1100, and this appeal followed.

Plaintiff's declaration consisted of one count and charged in substance that defendant, at Chicago, etc., on January 27, 1920, with force of arms, maliciously and wantonly assaulted plaintiff, and then and there violently seized and laid hold of him and beat him and kicked him, and struck him in the face with a cuspidor and also with a glass ash tray, and tore his clothes, broke a pair of his spectacles and bruised and lacerated one of his eyes and his face, whereby he was greatly injured, both internally and externally, and suffered great pain, and was hindered in the performance of his business affairs, and was obliged to expend the sum of \$100 in having his bruises and disorders healed, etc.

To the declaration defendant filed a plea of the general issue; and also a further plea amounting to a plea of self defense, to which plaintiff filed a replication.

Only two witnesses testified upon the trial, a plaintiff and defendant. They were examined and cross-examined at length.



1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

It appears that defendant was the lessee of a building, at No. 13 South Halsted Street, Chicago, on the ground floor of which he conducted a restaurant and on the upper floors a hotel or lodging house. The hotel premises were heated by steam furnished by defendant. Plaintiff, a carpenter by trade, was a roomer in the hotel, and early in the evening of January 27, 1920, was in the office or sitting room thereof engaged in reading and at times conversing with a friend. As there was little or no heat in the nearby steam radiator plaintiff several times pounded on the radiator with a pair of scissors, as a signal that the room was cold and heat was desired. The repeated pounding caused considerable noise in the restaurant below, because of connecting iron pipes, and attracted defendant's attention and evidently disturbed him. Accompanied by one Pavlotes, a waiter employed in the restaurant, defendant came upstairs, inquired of plaintiff what was the meaning of the noise and, according to plaintiff's testimony, on being informed that there was no steam in the radiator, committed a brutal and vicious assault and battery upon plaintiff, aided and assisted by Pavlotes. We deem it unnecessary to set forth the details of the struggle that ensued. Suffice it to say that the charges contained in the declaration, as to the assault and defendant's unwarranted acts and the resulting injuries and damage to plaintiff, were fully sustained by the latter's testimony. Defendant denied committing any of the acts charged, but the jury evidently believed plaintiff and did not believe defendant. Pavlotes did not testify. Defendant's testimony was to the effect that after he got upstairs and made protests to plaintiff as to the noise, the latter called him unprintable names and struck at him, and that then he immediately ran away and called the police who subsequently came. It thus appears that defendant's plea of





self defense was abandoned. And we are unable to say, after reviewing the testimony, that the verdict is not sustained by a preponderance of the evidence, or that the judgment, after the remittitur, is excessive, as contended by defendant's counsel.

Defendant's counsel also contend that the judgment should be reversed because of a certain question asked of defendant on cross-examination by plaintiff's attorney. It was whether defendant and Pavlotes after the fighting had not been arrested and fined in a police court. The question was objected to, the objection immediately sustained by the court, and the witness did not answer. While the question was improper, we do not think under all the testimony that it was so prejudicial to defendant as to warrant a reversal of the judgment.

Complaint is made of the giving of instructions, numbered 3 and 5, offered by plaintiff, because, as contended, they ignore defendant's theory of self defense as set forth in one of his pleas. It is a sufficient answer to say that the instructions are not objectionable in this regard because it appears from defendant's testimony on the trial that said theory was abandoned and that the issue of self defense was not in the case.

And we do not think that the trial court erred in allowing plaintiff to testify as to the particular acts done by Pavlotes, defendant's employee, at the time of the committing by defendant of the grievances complained of. It sufficiently appears that both were present at the time, aiding and assisting each other.

Finding no reversible error in the record, the judgment of the Circuit Court is affirmed.

AFFIRMED.

Fitch and Barnes, JJ., concur.



1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the Americas (CLA) in the United States. The Commission is therefore unable to determine whether the CLA is a legitimate organization or a subversive one.

325 - 28983

DARA FRANCES JONES,  
Appellee.

vs.

LILY J. EKLUND,  
Appellant.

3813a  
234 I.A. 624  
APPEAL FROM

MUNICIPAL COURT  
OF CHICAGO.

MR. PRESIDING JUSTICE GRINLEY DELIVERED THE OPINION OF THE COURT.

In an action, commenced January 23, 1922, to recover a balance of \$122.19, claimed to be due plaintiff on defendant's promissory note, the court, after each party had testified and certain documentary evidence had been introduced, instructed the jury to return a verdict in plaintiff's favor and to assess her damages in said amount. The jury returned such a verdict and judgment for \$122.19 was entered against defendant and this appeal followed. No brief and argument has been filed in this appellate court by plaintiff's counsel.

On the trial plaintiff introduced the note in evidence and after testifying that the balance due, including interest, was \$122.19, rested her case. The note is dated January 30, 1922, and by it defendant promised to pay to the order of plaintiff 60 days after date the sum of \$450, with interest at 7% per annum after maturity. On the back of the note appears the endorsement: "Credit \$336.20, May 1, 1922."

In defendant's affidavit of merits to plaintiff's amended statement of claim her defense is stated as follows:

"That on or about April 29, 1922, she delivered to plaintiff for reduction and cancellation a certain income bond, No. 2788388; that said bond was accepted by plaintiff for said purpose, and that in consideration thereof plaintiff agreed to and did cancel the indebtedness of defendant on said note set forth in plaintiff's amended statement of claim, and released defendant therefrom; that there is nothing due on said note; and that defendant is not indebted to plaintiff in the sum of \$122.19 or any other sum."



1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

1888 / 1888

Defendant's evidence on the trial tended to establish this defense. She testified in substance that about April 20, 1922, after the maturity of the note, she had a conversation with plaintiff, an agent of the Equitable Life Assurance Society; that plaintiff then said she would allow defendant to return an income bond of the Society, on account of which the note had been given, and would have the principal amount of the bond reduced, and in consideration of said return would cancel the indebtedness remaining due on the note; and that in accordance with said conversation defendant returned to plaintiff said income bond, No. 2788388, issued to her on May 26, 1920, and wrote a letter addressed to the Society, in the form as requested by plaintiff, and delivered it to plaintiff, in which defendant stated that she released all of her right, title and interest "in the part of this bond to be discontinued" and returned therewith said bond "for the purpose of making reduction therein." This letter was introduced in evidence, and defendant further testified that thereafter plaintiff gave her another income bond of the Society, which was payable at the rate of \$50 per month after the age of 55 years, and which was for a smaller amount, as to monthly income, than the original bond. Plaintiff testified in rebuttal that she never agreed with defendant to cancel the balance due on the note. It thus appears that there was an issue of fact to be passed upon by the jury, and we are of the opinion that the trial court erred in directing the jury to return a verdict for plaintiff, upon her motion made at the close of all the evidence, and in entering judgment upon that verdict. It is well settled that "upon a motion to direct a finding upon a controverted question of fact, the question is whether there is any evidence which fairly tends to support the contention of the party against whom the finding is asked; it is not enough, to justify the granting of such motion, that the court may be of the opinion



[illegible]

that upon weighing the evidence a verdict against the party making the motion would have to be set aside." (Haley v. Robison, 233 Ill. 614, 616; Libby, McNeill & Libby v. Cook, 222 Ill. 306, 313; Bechtel v. Marshall, 233 Ill. 486, 490.) And we think that defendant's evidence as to the agreement she says she made with plaintiff after the maturity of the note and when plaintiff was still the holder, if believed by the jury, would constitute a good defense to the present action. In 8 Corpus Juris page 611, Sec. 848, it is said: "Payment is not necessary to discharge a bill or a note. \* \* For instance, a bill or a note may be discharged by the act of the parties by novation, by accord and satisfaction, by compromise and settlement, by a release, \* \* or in many other ways." (See, also, sections 118, 121, 195 of the Negotiable Instrument Law, and Corin v. Wiley, 215 Ill. App. 541, 545.)

For the reasons indicated the judgment of the Municipal Court is reversed and the cause is remanded for a new trial.

REVERSED AND REMANDED.

Fitch and Barnes, JJ., concur.





28978  
340 - 28998

3814a

ELF JOHNSON and HAROLD  
F. JOHNSON,  
Appellees,

vs.

WALTER R. KOERNER,  
Appellant.

234 I.A. 624  
APPEAL FROM  
SUPERIOR COURT,  
COOK COUNTY.

STATEMENT BY THE COURT: On October 23, 1922, Elf Johnson and Harold F. Johnson filed their bill in the Superior Court of Cook County, praying that the written contract between Elf Johnson and Walter R. Koerner (dated December 6, 1920, and filed for record by Koerner in the office of the recorder of deeds of Cook County on February 14, 1922), and also a certain affidavit of Koerner's (filed for record on October 7, 1922), be removed as clouds upon complainants' title to certain real estate in Chicago. The cause was referred to a master to take evidence and report the same together with his conclusions. While the cause was pending before the master, Koerner, by leave of court, filed a cross-bill, praying for specific performance of the contract. By agreement of the parties it was ordered that the evidence already taken and to be taken upon the original bill and answer be considered as taken upon the issues raised by the cross-bill and answers thereto. On May 5, 1923, the master's report was filed. He made numerous findings, and recommended that a decree be entered in complainants' favor in accordance with the prayer of their bill, and, further, that Koerner's cross-bill be dismissed. On July 11, 1923, the decree appealed from was entered, in which the court, after overruling all exceptions to the master's report, approving and confirming the report, and making findings in substantial accord with those of the master, adjudged and



1944-1945

[illegible]

decreed that the cross-bill be dismissed for want of equity; that the recordation of said contract, and of Keerner's affidavit, constitute clouds upon complainants' title to the real estate, which should be removed; that said clouds are hereby removed and complainants' title is freed and cleared therefrom; but that complainants pay to Keerner the sum of \$515, previously paid by him for interest on a certain mortgage encumbrance.

Defendant has assigned numerous errors, and complainants have assigned as a cross-error the court's action in decreeing that complainants should pay to defendant said sum of \$515.

On and prior to December 6, 1920, Klaf Johnson was the owner in fee simple of 62 lots of vacant ground in Chicago, Cook County, Illinois. On that day Johnson, a widower, party of the first part, entered into a written contract with Keerner, party of the second part, whereby, by the first paragraph, Johnson agreed to sell and convey to Keerner by general warranty deed the 62 lots, to be paid for as and when warranty deeds were delivered to Keerner, and at a fixed sum for each lot, ranging from \$1,300 each for inside lots to \$5,000 each for corner lots, and making a total sum "to be paid for all of said lots" of \$95,000. In said paragraph mention is made that all of the lots are encumbered with a trust deed, given by Johnson to Henry F. Kranes, as trustee, dated August 30, 1917, to secure an indebtedness of \$15,000, due 5 years after date, bearing interest at 6% per annum, payable semi-annually, "which encumbrance shall be paid out of the purchase price of said lots as provided in this contract." The second paragraph of the agreement is as follows:

"(2) The party of the first part shall from time to time within the term of twenty-two months following the execution of this contract convey the above described lots to the party of the second part in parcels of not less than five lots each for the prices above set forth.



Approved for release by NSA on 08-24-2014 pursuant to E.O. 13526

Approved by the Director: \_\_\_\_\_ Date: \_\_\_\_\_

[illegible]

THE UNIVERSITY OF CHICAGO

[illegible]

It was not possible to give a definite answer to this question.

Downloaded At: 11:53 11 September 2009

• *Journal of Management Education*

1. The first group of authors (e.g., [1, 2]) has shown that the use of a single, common, non-physical, reference frame for all the particles in a system is not only unphysical but also leads to nonlocality. This is because the reference frame is not defined by any physical process and is therefore not subject to the constraints of special relativity. This leads to the possibility of superluminal communication, which is not allowed by special relativity.

Journal of the American Statistical Association

... and the ... ..

Source: *Journal of the American Statistical Association*, 1941, 36, 1, 1-12.

THE ORDER IS FOR PAYMENT OF THE AMOUNT OF \$100.00 TO THE ORDER OF THE UNITED STATES OF AMERICA.

*(Signature)*

100-443887-100

... ..

was applied to call the observed  $\beta$  values into question.

*(The following information was obtained from the records of the FBI.)*

Copyright © 2005 John Wiley & Sons, Inc. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, scanning, or otherwise, except as may be permitted in writing by John Wiley & Sons, Inc.

It was with the intention of making the life of the people of the world more comfortable and more happy that the first of the great religions was founded. It was with the intention of making the life of the people of the world more comfortable and more happy that the first of the great religions was founded.

© 1996 The Authors. Journal compilation © 1996 Blackwell Science Ltd

© 1996 John Wiley & Sons, Inc. All rights reserved. This journal is registered at the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923. Organizations in the U.S. who are also registered with C.C.C. may therefore copy material (beyond the limits permitted by sections 107 and 108 of U.S. copyright law) subject to payment to C.C.C. of the per copy fee of \$05.00. This consent does not extend to multiple copying for promotional or commercial purposes. ISI Tear Sheet Service, 3501 Market Street, Philadelphia, PA 19104, USA, is authorized to supply single copies of separate articles for private use only. Organizations authorized by the Copyright Licensing Agency may also copy material subject to the usual conditions. For all other use, permission should be sought from John Wiley & Sons, Inc.

...and the ...

© 1997 by the American Psychological Association, 0893-3200/97/\$12.00 DOI: 10.1037/0893-3200.11.4.575

THE UNIVERSITY OF CHICAGO PRESS

THESE RESULTS ARE IN ACCORD WITH THE FINDINGS OF OTHER STUDIES.

Downloaded At: 11:52 11 September 2009

twisted by an arbitrary odd integer leaves invariant the number of points of the orbit.

under most cases from 1965 and to 1970.

© 2000 Blackwell Science Ltd, *Journal of Internal Medicine* 247: 395–401

The party of the first part shall accept in payment of said lots a promissory note of even date with the warranty deed for the lot conveyed, bearing interest at the rate of six per cent (6%) per annum, due on or before one year after date and for the sum above set forth as the purchase price of said lot less the principal amount paid by the party of the second part to obtain the release of said lot from the lien of the above described encumbrance; said note is to be secured by a trust deed executed and delivered by the party of the second part, which trust deed shall be subject and subordinate to the lien of a first mortgage or trust deed to be made by the party of the second part to secure a loan to erect a building on said lot. Within ten days after the execution of this contract the party of the second part shall by written notice addressed to the party of the first part and delivered to him designate at least five of the lots of the above described property on which he proposes to begin excavation for the erection of buildings and which he desires conveyed to him by warranty deed; and the party of the first part shall immediately thereafter execute general warranty deeds conveying the lots so designated to the party of the second part for the price aforesaid and deliver the same in escrow to Charles E. Schlytern, c/o Union Bank of Chicago, 25 No. Dearborn Street, Chicago, Illinois. The party of the second part thereupon shall procure the necessary release deeds from the owner and holder of the Fifteen Thousand Dollar (\$15,000) encumbrance above mentioned of the lots so conveyed, and immediately thereafter shall execute and deliver to the escrow agent his notes and trust deeds for the balance of the purchase price of the lots, so conveyed, respectively. Said release deeds and the notes and trust deeds evidencing the balance of the purchase price of said lots shall be held by the escrow agent. Immediately thereafter the party of the second part shall procure first mortgage loans upon said property for the purpose of erecting buildings on said lots conveyed. Upon the execution and recording of such first mortgage or mortgages the escrow agent shall immediately thereafter deliver the above referred to warranty deeds together with the release deeds to the party of the second part, and at the same time shall deliver to the party of the first part the second mortgage notes and trust deed securing the balance of the purchase price of said lots."

In the third and fourth paragraphs it is stated that the lots, conveyed as above provided, shall be improved by Keerner "with buildings to cost not less than \$6,000 each;" that within a reasonable time after any building is completed on any of the lots Keerner shall proceed to sell the same, provided a fair market price can be obtained, and out of the proceeds shall immediately pay the second mortgage note given to Johnson to secure a part of the purchase price of the lot on which the





building is erected; and that none of the buildings shall be sold, without Johnson's written consent, unless a sufficient cash payment is made by the purchaser to discharge said second mortgage.

In the fifth and sixth paragraphs it is provided that all interest as and when it falls due on said \$15,000 encumbrance shall be paid by Keerner to the holder or holders of the notes, and that Keerner shall also pay all special taxes and special assessments, except as set forth below, due and payable after 1920, and all general taxes due and payable after 1921, on said real estate; that Johnson shall pay all general taxes thereon levied for the year 1920, and shall also pay all assessments for all sidewalks on or about the premises that are now completed, or will be completed within 6 months from the date of the contract, and Johnson agrees to see to it that all sidewalks are completed within said time; and that Johnson shall procure from the Chicago Title & Trust Co. a guaranty policy, brought down to the date of the contract, for the purchase price agreed upon for the lots, and deliver the same to the escrow agent within 30 days.

In the seventh paragraph it is provided that "ALL lots which shall not have been conveyed" to Keerner, "in accordance with the terms of this contract on or before 22 months from the date hereof, shall," at the expiration of said time, "be paid for in cash" by Keerner at the price provided for in the contract, and thereupon Johnson shall execute and deliver to Keerner "general warranty deeds for said lots as provided in this contract."

The court in the decree, following substantially the findings of the master, found inter alia that within 10 days after the making of the contract Keerner designated to Johnson five of the 62 lots, and in August, 1921, two lots, and a portion of a third adjacent thereto, as lots to be conveyed to him and under



1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

IN THE FIRST AND SECOND VOLUMES OF THE HISTORY OF THE UNITED STATES, THE AUTHOR HAS TAKEN CARE TO PRESENT THE READER WITH A FULL AND ACCURATE ACCOUNT OF THE PROGRESS OF THE NATION, FROM THE FIRST SETTLEMENT OF THE COLONIES, TO THE PRESENT TIME. THE FIRST VOLUME CONTAINS THE HISTORY OF THE COLONIES, FROM 1607 TO 1763. THE SECOND VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1763 TO 1789. THE THIRD VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1789 TO 1800. THE FOURTH VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1800 TO 1812. THE FIFTH VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1812 TO 1820. THE SIXTH VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1820 TO 1828. THE SEVENTH VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1828 TO 1836. THE EIGHTH VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1836 TO 1844. THE NINTH VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1844 TO 1852. THE TENTH VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1852 TO 1860. THE ELEVENTH VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1860 TO 1868. THE TWELFTH VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1868 TO 1876. THE THIRTEENTH VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1876 TO 1884. THE FOURTEENTH VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1884 TO 1892. THE FIFTEENTH VOLUME CONTAINS THE HISTORY OF THE UNITED STATES, FROM 1892 TO 1900.

[illegible]

the terms of the contract; that Johnson executed deeds of conveyance of said lots to Koerner and deposited the deeds with Schlytern, the escrow agent; that shortly after the date of the contract Johnson caused to be procured an owner's guaranty policy from the Chicago Title & Trust Co., which was left with said Trust Co. to facilitate transfer of the lots, which were to be built upon as deeds were obtained from Johnson; that at the date of the contract there was a first mortgage encumbrance upon all of the 62 lots for \$15,000, secured by trust deed to said Kramsz, maturing on August 20, 1922; that after the execution of the contract Johnson paid the interest upon this encumbrance from August 20, 1920 to December 6, 1920, amounting to \$265, and Koerner paid the balance of the interest to February 20, 1921, amounting to \$185; that about January 22, 1921, upon the delivery of deeds to the five lots, \$2,500 was paid upon said encumbrances, and later, about May 7, 1921, the further sum of \$1,500 was paid thereon, so that said \$15,000 encumbrance was reduced to \$11,000; that Koerner made default in the payment of the interest (\$330) due on August 20, 1922, upon said encumbrance as reduced, and complainants paid that interest, and, after August 20, 1922, (the date of the maturity of said encumbrance as reduced), arranged for an extension of the payment of the mortgage indebtedness; that Koerner also made default in the payment of the general taxes upon the premises for the year 1921, and Johnson, in order to protect his interest, was compelled to expend the sum of \$615.29 therefor; that Koerner also made default in the payment of special assessments, and Johnson was compelled to make certain payments therefor between December 15, 1921, and December 14, 1922, aggregating \$5,276.77, of which sum \$2,961.44 became due and payable prior to October 6, 1922, (the date of the expiration of said contract) and was paid by Johnson or complainants prior to October 6, 1922; and that none of said payments was repaid by Koerner.





The court further found that Koerner erected five two-flat buildings upon said five lots in accordance with the terms of the contract, and subsequently erected an 18-apartment building upon said two lots and a portion of the third lot, and that he never thereafter erected any other building upon any other lots; that during the fall of 1921, Koerner applied to Johnson for a limited number of lots, less than the whole number remaining, and "offered to pay cash" for a conveyance thereof, but Johnson, who then held title to all of said remaining lots, "refused to convey any number of said lots less than the whole for cash;" that thereafter, and before October 6, 1922, several conferences were held between complainants, and parties representing them, and Koerner, and parties representing him, which conferences were brought about at Koerner's instance for the purpose of securing, if possible, a modification of the contract in question, "so that conveyances from time to time of a limited number of said lots, less than the whole, on payment of cash therefor might be provided for," and for the further purpose of modifying said contract, "so that complainants would accept a certain amount of the purchase price for said lots in cash, and accept as payment for the balance of the purchase price, mentioned in said contract, a first mortgage or trust deed upon said lots;" that no modification of the contract was arrived at or made, but complainants notified Koerner that they would go through with the contract according to its terms, notwithstanding the fact that he had made default at that time in the payment of the general taxes and special assessments; and that Koerner was notified during said negotiations that complainants would not consent to an extension of the contract beyond October 6, 1922.

The court further found that about May 13, 1922, Johnson caused to be conveyed to Harold F. Johnson, co-complainant herein, an undivided one-half interest in all of the lots, except those theretofore conveyed to Koerner, and that, at the time of the



The first of these is the fact that the  
two-thirds of the population of the United States  
are now living in cities and towns of 25,000  
or more. This is a fact of great importance  
in the history of the United States, and it  
is one which has not been fully appreciated  
by the general public. It is a fact which  
has led to the development of a new type of  
city, and it is one which has led to the  
development of a new type of government.  
The second of these is the fact that the  
population of the United States is now  
increasing at a rapid rate. This is a fact  
of great importance in the history of the  
United States, and it is one which has not  
been fully appreciated by the general public.  
It is a fact which has led to the  
development of a new type of city, and it  
is one which has led to the development of  
a new type of government.

filing of their bill, complainants were the owners as joint tenants of the real estate; that after Elef Johnson delivered to Koerner the deed to said two lots and the portion of the third lot, the latter never at any time specified or designated to Johnson, or to his co-complainant, any other lots that he (Koerner) desired to have conveyed to him under the contract; that the only request or demand made by him for the conveyance of other lots was on his proposal to pay cash for a limited number of lots several months prior to October 6, 1922; that complainants, when such request or demand was made, refused the same, and, in so doing, were within their legal rights; that Koerner had the right at any time prior to October 6, 1922, to obtain the conveyance of five or more of the lots at any time, after performance by him of all terms of the contract, and was obligated to erect buildings thereon, and he also had the right, on and prior to said date, to offer to pay, and to pay, cash for all of the remaining lots and to receive a conveyance thereof, but that he did not at any time, after the conveyance to him by Elef Johnson of said two lots and the portion of the third lot, request the conveyance of any more of the lots to be paid for by him by the second mortgage plan provided for, and "neither did he offer to pay cash for all of the remaining unimproved and unconveyed lots, nor was any tender made by him to the complainants, or either of them, before, on, or after October 6, 1922, of any sum of money whatever for all of the unconveyed or unimproved lots, or for any of them, until after the commencement of this suit."

The court further found that on October 14, 1922, (after the expiration of the contract) Koerner had tendered to him a deed of conveyance of all the remaining unconveyed lots, and he was requested to pay the balance due on the purchase price for all of the lots, but that he did not then accept the deed or pay said balance, nor did he tender said balance until February 21, 1923,





at a time when the present action had been pending against him for about four months; that on said day, October 14, 1922, he did not know that such a deed would be tendered to him; that, on February 20, 1923, while the cause was pending before the master, he filed his cross-bill, and, on the following day before the master, he tendered to complainants the sum of \$87,000, and offered to pay whatever additional sum might be necessary to pay the full amount that would be due at that time under said contract, on the assumption that the contract was still in full force, but that complainants refused the tender.

The court further found that neither the contract in question nor the operation thereof was extended by anything done or omitted by complainants, or by anyone acting for them, or by any specific or implied agreement between the parties; that Elaf Johnson, from December 6, 1920, and both complainants, from the time Harold F. Johnson acquired his interest in the premises, and down to and including October 6, 1922, did and performed, and at all times were ready, able and willing to perform, all the terms and conditions of the contract, to be done and performed by the first party thereto, and that complainants were never at any time in default; that on the contrary Koerner made default; that he failed to pay general taxes and special assessments as required under the contract; that after the conveyance to him of said two lots and a portion of said third lot, he "was never at any time ready and willing to take the balance of said lots in blocks of five or more and improve them according to the terms of the contract and pay for them by executing and delivering to complainants second mortgages for the contract price;" and that, prior to the commencement of the present suit, he was never ready and willing to accept a conveyance of all of the remaining un conveyed lots and pay cash therefor as provided in the contract.





The court further found that between the date of the contract and its expiration, October 6, 1922, Keerner paid a part of the interest that had accrued during that time on the mortgage encumbrance then on the property, amounting to the total sum of \$515.



The above information was obtained from a review of the files of the FBI, New York Office, dated 10/18/67.

MR. PRESIDING JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

After considering the contract, and reviewing the evidence as contained in the abstract and supplemental abstract of the record, the master's findings and the briefs and arguments of counsel, we have reached the conclusion that the decree appealed from should be affirmed.

Counsel for Keerner contends that the court should have denied the relief prayed for by complainants and granted the relief asked by Keerner in his cross-bill for the reason that complainants first breached the contract by refusing Keerner's demands to be allowed to pay cash for a limited number of the unconveyed lots. The argument is in substance that, inasmuch as the notes to be given to Johnson in part payment of lots designated by Keerner were to be made payable "on or before" one year and to be secured by a second mortgage, the offer to pay cash for a limited number of lots, instead of following the second mortgage plan as provided, amounted to a substantial compliance with the contract. To support the argument the case of Kordecka v. Wedstrom, 305 Ill. 69, is cited. But the contract in that case is essentially different from the present contract, which contemplated that the lots designated should be improved by Keerner with buildings to cost not less than \$5,000. At no time prior to October 6, 1922, does it appear that Keerner offered, or was able or willing, to pay cash for all of the unimproved and unconveyed lots. Under the terms of the contract we think complainants were justified in refusing said demands, first, because no specific lots were designated, and, secondly, because complainants had a right to protect themselves from a resale of said limited number of lots by Keerner and the possible erection by the purchasers of cheaper buildings thereon, which would have had a tendency to cause damage to the value of the remaining lots which Keerner, by not making



1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee.

2. The second is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee.

3. The third is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee.

4. The fourth is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee.

5. The fifth is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee.

6. The sixth is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee.

7. The seventh is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee.

8. The eighth is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee.

9. The ninth is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee.

10. The tenth is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee.

further designations under the contract, might leave on complainants' hands.

And we do not think that the evidence sustains counsel's further contentions, (a) that the Johnsons were not at all times, prior to the date of the expiration of the contract, ready, able and willing to perform the terms and conditions thereof on their part to be performed, but made a studied effort to make it impossible for Koerner to perform, or (b) that Elof Johnson or complainants at the date of the contract, its expiration or thereafter, were not the owners in fee simple of the premises (excepting those lots conveyed to Koerner at his designation.)

Counsel further contends that the Johnsons, by tendering a deed to Koerner on October 14, 1922, (eight days after the expiration of the contract) of the remaining unconveyed lots, thereby elected to continue the contract in force. In our opinion the point is without merit. We do not think that the Johnsons were under any obligation to make such tender. And, under the facts and circumstances, the effect of Koerner's failure to accept it and pay for the property prior to the filing of the bill on October 23, 1922, was to put him, unquestionably, in default.

Counsel further contends that Elof Johnson's conveyance, about May 13, 1922, of an undivided one half interest in the premises (viz, those lots remaining unconveyed to Koerner) to Harold F. Johnson, son of Elof and co-complainant herein, whereby they became the owners in joint tenancy, was a breach of the contract on Elof Johnson's part. We do not think so. And it appears from one of the court's findings, amply sustained by the evidence, that after said conveyance and prior to the filing of the bill both complainants were ready, able and willing to perform all terms of the contract as agreed to be performed by Elof Johnson.

As to Koerner's tender of \$27,000, etc., made on February 21, 1923, after the contract had expired and about four



© 2004 Blackwell Publishing Ltd *Journal of Internal Medicine* 255: 103–110

[illegible][illegible][illegible]

months after complainants' bill was filed, and after the taking of the evidence before the master (on the issues made by said bill and Koerner's answer thereto) had practically been completed, the master found that the tender came too late and that complainants were under no obligation to accept the same. The court in effect confirmed these findings in the decree. Counsel for Koerner contend in substance that, inasmuch as the contract did not contain any express provision to the effect that time was of the essence of the contract, the tender, although late, was such as complainants were bound to accept, and that, hence, the court erred in entering the decree appealed from. We cannot agree. Koerner's cross-bill, praying for a specific performance of the contract, was not filed until the day before said tender was made. The duration of the contract was for a period of 22 months, expiring October 6, 1922. During that period Koerner had the right upon his designation to purchase certain lots at the prices named and erect buildings thereon under the second mortgage plan. He only made two designations. He also had the right to purchase all of the lots for cash on or before October 6, 1922. After making said two designations and receiving the lots he failed to comply with his agreements as to taxes and special assessments, and complainants were obliged to expend large sums of money to protect their interest in the property. Clearly, under the circumstances disclosed, complainants had the right to demand that Koerner should comply with the contract, and take all the remaining lots at the prices named, and pay cash therefor by October 6, 1922, and, if this was not done by that time, to consider the contract as no longer in force, and act accordingly. In Wood v. Shaffer, 248 Ill. 617, it is said (pp. 630-1):

"At law the time fixed for the performance of a contract is deemed of the essence of the contract. Tyler v. Young, 2 Scam. 444,) but courts of equity frequently relieve a party from the consequences resulting at law from his failure to perform his contract



[illegible]

4-11-1964

at the time specified therein for performance, where time is not of the essence of the contract, where enforcement of the strict rules of law would result in a forfeiture of money paid or property delivered under the contract, or would otherwise be inequitable and against good conscience; but in such cases a reasonable excuse for the non-performance at the time fixed for performance must be shown in order to warrant a court of equity in compelling specific performance on behalf of the delinquent party."

In Heckard v. Bayre, 34 Ill. 142, 150, it is said:

"A court of equity has no more right than a court of law to dispense with an express stipulation of parties in regard to time, in contracts of this nature, where no fraud, accident, or mistake has intervened. To relieve from the effect of such stipulations, except on the grounds named, would practically deny the right of parties to make them. Such relief would result in great injustice to vendors."

In Milnor v. Willard, 34 Ill. 38, 41, it is said:

"Lands in this country are an article of commerce, and parties making contracts for their sale, rely upon the obligations of purchasers as a means by which they are enabled to transact business. Promptitude in the discharge of such obligations is as essential as in other commercial transactions; and justice to the vendor requires that such obligations should be literally complied with, unless the stipulation in regard to time is waived, or there is some excuse for a non-compliance."

In Miller v. Rice, 133 Ill. 315, 326, it is said:

"Time is originally of the essence of the contract in the view of a court of equity, whenever it appears to have been part of the real intention of the parties that it should be so, and not to have been inserted as a merely formal part of the contract. As this intention may either be separately expressed, or may be implied from the nature or structure of the agreement, it follows that time may be originally of the essence of a contract, as to any one or more of its terms, either by virtue of an express condition in the agreement itself making it so, or by reason of its being implied."

In Dikeman v. Sunday Creek Coal Co., 184 Ill. 546,

551, it is said:

"A court of equity is bound by a contract as the parties have made it, and has no authority to substitute for it another and different agreement, and particular language is not necessary to make the time of performance essential, if right and justice in the individual case demand it. An agreement must be complied with as made unless some stipulation is waived or there is a just excuse for non-compliance."



[illegible]

Page 10 of 10, 100, 200, 300, 400, 500, 600, 700, 800, 900, 1000

[illegible]

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of the said Court, at the City of New York, this 14th day of June, 1906.

There is a large number of people who are interested in the work of the Commission, and who are also interested in the work of the Commission. The Commission is interested in the work of the Commission, and the Commission is interested in the work of the Commission.

1990-1991, 1991-1992, 1992-1993, 1993-1994, 1994-1995, 1995-1996, 1996-1997, 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021-2022, 2022-2023, 2023-2024, 2024-2025, 2025-2026, 2026-2027, 2027-2028, 2028-2029, 2029-2030, 2030-2031, 2031-2032, 2032-2033, 2033-2034, 2034-2035, 2035-2036, 2036-2037, 2037-2038, 2038-2039, 2039-2040, 2040-2041, 2041-2042, 2042-2043, 2043-2044, 2044-2045, 2045-2046, 2046-2047, 2047-2048, 2048-2049, 2049-2050, 2050-2051, 2051-2052, 2052-2053, 2053-2054, 2054-2055, 2055-2056, 2056-2057, 2057-2058, 2058-2059, 2059-2060, 2060-2061, 2061-2062, 2062-2063, 2063-2064, 2064-2065, 2065-2066, 2066-2067, 2067-2068, 2068-2069, 2069-2070, 2070-2071, 2071-2072, 2072-2073, 2073-2074, 2074-2075, 2075-2076, 2076-2077, 2077-2078, 2078-2079, 2079-2080, 2080-2081, 2081-2082, 2082-2083, 2083-2084, 2084-2085, 2085-2086, 2086-2087, 2087-2088, 2088-2089, 2089-2090, 2090-2091, 2091-2092, 2092-2093, 2093-2094, 2094-2095, 2095-2096, 2096-2097, 2097-2098, 2098-2099, 2099-2100, 2100-2101, 2101-2102, 2102-2103, 2103-2104, 2104-2105, 2105-2106, 2106-2107, 2107-2108, 2108-2109, 2109-2110, 2110-2111, 2111-2112, 2112-2113, 2113-2114, 2114-2115, 2115-2116, 2116-2117, 2117-2118, 2118-2119, 2119-2120, 2120-2121, 2121-2122, 2122-2123, 2123-2124, 2124-2125, 2125-2126, 2126-2127, 2127-2128, 2128-2129, 2129-2130, 2130-2131, 2131-2132, 2132-2133, 2133-2134, 2134-2135, 2135-2136, 2136-2137, 2137-2138, 2138-2139, 2139-2140, 2140-2141, 2141-2142, 2142-2143, 2143-2144, 2144-2145, 2145-2146, 2146-2147, 2147-2148, 2148-2149, 2149-2150, 2150-2151, 2151-2152, 2152-2153, 2153-2154, 2154-2155, 2155-2156, 2156-2157, 2157-2158, 2158-2159, 2159-2160, 2160-2161, 2161-2162, 2162-2163, 2163-2164, 2164-2165, 2165-2166, 2166-2167, 2167-2168, 2168-2169, 2169-2170, 2170-2171, 2171-2172, 2172-2173, 2173-2174, 2174-2175, 2175-2176, 2176-2177, 2177-2178, 2178-2179, 2179-2180, 2180-2181, 2181-2182, 2182-2183, 2183-2184, 2184-2185, 2185-2186, 2186-2187, 2187-2188, 2188-2189, 2189-2190, 2190-2191, 2191-2192, 2192-2193, 2193-2194, 2194-2195, 2195-2196, 2196-2197, 2197-2198, 2198-2199, 2199-2200, 2200-2201, 2201-2202, 2202-2203, 2203-2204, 2204-2205, 2205-2206, 2206-2207, 2207-2208, 2208-2209, 2209-2210, 2210-2211, 2211-2212, 2212-2213, 2213-2214, 2214-2215, 2215-2216, 2216-2217, 2217-2218, 2218-2219, 2219-2220, 2220-2221, 2221-2222, 2222-2223, 2223-2224, 2224-2225, 2225-2226, 2226-2227, 2227-2228, 2228-2229, 2229-2230, 2230-2231, 2231-2232, 2232-2233, 2233-2234, 2234-2235, 2235-2236, 2236-2237, 2237-2238, 2238-2239, 2239-2240, 2240-2241, 2241-2242, 2242-2243, 2243-2244, 2244-2245, 2245-2246, 2246-2247, 2247-2248, 2248-2249, 2249-2250, 2250-2251, 2251-2252, 2252-2253, 2253-2254, 2254-2255, 2255-2256, 2256-2257, 2257-2258, 2258-2259, 2259-2260, 2260-2261, 2261-2262, 2262-2263, 2263-2264, 2264-2265, 2265-2266, 2266-2267, 2267-2268, 2268-2269, 2269-2270, 2270-2271, 2271-2272, 2272-2273, 2273-2274, 2274-2275, 2275-2276, 2276-2277, 2277-2278, 2278-2279, 2279-2280, 2280-2281, 2281-2282, 2282-2283, 2283-2284, 2284-2285, 2285-2286, 2286-2287, 2287-2288, 2288-2289, 2289-2290, 2290-2291, 2291-2292, 2292-2293, 2293-2294, 2294-2295, 2295-2296, 2296-2297, 2297-2298, 2298-2299, 2299-2300, 2300-2301, 2301-2302, 2302-2303, 2303-2304, 2304-2305, 2305-2306, 2306-2307, 2307-2308, 2308-2309, 2309-2310, 2310-2311, 2311-2312, 2312-2313, 2313-2314, 2314-2315, 2315-2316, 2316-2317, 2317-2318, 2318-2319, 2319-2320, 2320-2321, 2321-2322, 2322-2323, 2323-2324, 2324-2325, 2325-2326, 2326-2327, 2327-2328, 2328-2329, 2329-2330, 2330-2331, 2331-2332, 2332-2333, 2333-2334, 2334-2335, 2335-2336, 2336-2337, 2337-2338, 2338-2339, 2339-2340, 2340-2341, 2341-2342, 2342-2343, 2343-2344, 2344-2345, 2345-2346, 2346-2347, 2347-2348, 2348-2349, 2349-2350, 2350-2351, 2351-2352, 2352-2353, 2353-2354, 2354-2355, 2355-2356, 2356-2357, 2357-2358, 2358-2359, 2359-2360, 2360-2361, 2361-2362, 23

[illegible]

THE UNIVERSITY OF CHICAGO

Figure 4.  $EA_{\text{max}}$  vs.  $EA_{\text{min}}$ .

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the Americas (CLA) in the United States. The Commission is therefore unable to determine whether the CLA is a legitimate organization or a subversive one.

But we are not disposed, under all the facts in evidence, to interfere with the court's finding, and that portion of the decree, relative to the recovery back by Kearney from the complainants of said sum of \$515, being for interest which he paid on the Krauss mortgage. We cannot agree with complainants' counsel that the well known doctrine, that he who comes into a court of equity must do equity, is not applicable.

The decree of the Superior Court is affirmed.

AFFIRMED.

Fitch and Barnes, JJ., concur.



[illegible]

7/10/1944

GREGORY T. VAN METER, Administrator  
of the Estate of Samuel Roper,  
Deceased,

Appellee,

vs.

CITY OF CHICAGO,

Appellant.

234 I.A. 624

APPEAL FROM SUPERIOR COURT

OF COOK COUNTY.

MR. PRESIDING JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

On October 20, 1921, plaintiff, as administrator of the estate of Samuel Roper, deceased, commenced the present action against the City of Chicago to recover damages for negligently causing the death of the deceased, a man of about 29 years of age, early in the morning of August 24, 1921. On the trial in July, 1923, the jury returned a verdict finding defendant guilty and assessing plaintiff's damages at \$2,500, and the court, after overruling defendant's motions for a new trial and in arrest of judgment, entered judgment upon the verdict against defendant and this appeal followed.

Plaintiff's original declaration consisted of two counts. In the first it is alleged in substance that "on to-wit, August 24, 1921," in the lifetime of Samuel Roper, defendant had control of a certain public street, called Calumet avenue, in the city of Chicago; that not regarding its duty to keep the street in good repair and condition, defendant, on the day aforesaid, negligently suffered said street, about 200 feet south of 41st street, to be and remain in bad repair and in an unsafe and dangerous condition, in that there were two large holes, near the center of the street, only partially filled and without any lights or warning signals, so that automobiles and other vehicles in pass-



100 - 1000

RECEIVED BY THE BUREAU OF THE  
AT THE OFFICE OF THE SECRETARY  
WASHINGTON

RECEIVED

100

RECEIVED BY THE BUREAU OF THE

RECEIVED

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

RECEIVED BY THE BUREAU OF THE

ing over the holes would receive jolts and jars, of which condition defendant then and there had notice, or by the exercise of due care should have had notice; that while said Roper "with all due care and diligence" was then riding in an automobile upon Calumet avenue in a northerly direction towards 41st street, said automobile, in passing over said holes, was thereby so jarred and jolted that he was thrown with great force out of it to and upon the ground and was thereby "then and there killed." Then followed in the count appropriate allegations relative to the surviving widow and children, who by the accident had been deprived of their means of support, etc. The second count contained substantially the same allegations, stating with more particularity the size of the holes. To this declaration defendant filed a plea of the general issue. On July 9, 1923, during the trial and more than one year after the death of the deceased, the court, on plaintiff's motion, granted him leave to amend each count of the declaration (and each was so amended) by inserting therein in an appropriate place the allegation that the death of the deceased "occurred on or about August 24, 1921, and within one year prior to the commencement of this suit." To the declaration as amended defendant filed a plea of the general issue and a plea of the statute of limitations, plaintiff demurred ore tenus to the latter plea, and the court sustained the demurrer.

The bill of exceptions discloses that on the argument on the demurrer defendant's attorney made the point that the original declaration did not state a good cause of action, in that neither count showed that the death of the deceased occurred within one year after the accident, and the amendment, stating that fact, was filed more than one year after said death.

Defendant's counsel here urge the same point and contend that the trial court erred in sustaining plaintiff's demurrer to defendant's plea. In our opinion there is no merit in the con-





tention. While it is well settled that, in an action brought under the Injuries Act for causing death by wrongful act, the declaration must allege facts showing that the action is brought within one year after the death, (Hartray v. Chicago Railways Co., 290 Ill. 85) we think that the original declaration sufficiently states a cause of action in this particular. The action was commenced and the original declaration filed on October 30, 1921, about two months after the happening of the accident, and it is alleged in each count that the accident occurred on August 24, 1921, on Calumet avenue, about 200 feet south of 41st street, Chicago, and that said Roper was "then and there killed."

But we do not think that the evidence sufficiently shows that Roper at and before the time of the accident, was in the exercise of due care for his own safety, as alleged, to warrant the verdict and judgment. The evidence as to the details of the accident is confined to the testimony of plaintiff's witness, John Arrington, the driver of the automobile. Other witnesses testified as to what they saw after the accident. The automobile was a one-seated roadster and five persons were riding in or on the car at the time - Arrington, the driver, and two girls, one in the lap of the other, on the seat beside him, and Roper and a man named Jabro were seated on the gas tank in the rear, facing backwards. Neither of the two girls, or Jabro, were called as witnesses. On the afternoon preceding August 24, 1921, Arrington took Roper in the car to Hammond, Indiana. They returned about nine o'clock in the evening, and Arrington left Roper at the Green Mill Inn, a soft drink parlor, where he was employed. Later Arrington picked up Roper at the Inn and they went to various places and finally, about 1:15 a. m. on the morning of August 24th, the car, with the occupants seated as above mentioned, was moving north on Calumet avenue, at a speed of about 20 miles per hour and approaching 41st





street. On passing over a partially unfilled hole in the street there was a severe jolt, and Hoper, who was seated on the gas tank, was thrown to the pavement and killed. According to Arrington there was a nipple, covered with a screw cap, on each end of the smooth and flat gas tank, but he did not know whether or not at the time of the accident Hoper was holding on to anything. According to the testimony of defendant's witness, Mausell, a police officer, who examined the tank after the accident, there were no nipples or projections on the top of the tank which a person, sitting thereon, could take hold of, and that the top was round. Under the facts disclosed we think the verdict and judgment are against the weight of the evidence on the question of the exercise of due care for his own safety on the part of Hoper at and before the time of the accident. Levenworth v. City of Bloomington, 71 Ill. 238, 241; Gibbons v. Aurora, etc. R. Co., 263 Ill. 266, 271).

The judgment of the Superior court is reversed and the cause remanded.

REVERSED AND REMANDED.

Fitch and Barnes, JJ., concur.



[illegible]

There was a general belief that the 1991 election was a free and fair election.

and, the focus is the individual and his/her

© 2000 Blackwell Science Ltd, *Journal of Internal Medicine* 247: 105–112

3816a

M. G. KASPER,  
Appellant,  
vs.  
MATEUSZ FUDACZ,  
Appellee.

APPEAL FROM MUNICIPAL COURT  
OF CHICAGO.

234 I.A. 625

MR. PRESIDING JUSTICE GRIMLEY  
DELIVERED THE OPINION OF THE COURT.

In this case, commenced in September, 1919, there have been three jury trials, all resulting in verdicts in favor of defendant. After the first trial in September, 1920, the court granted plaintiff's motion for a new trial. After the second trial in November, 1920, judgment was entered against plaintiff for costs and he appealed to this appellate court and the judgment was reversed and the cause remanded upon the grounds (1) that the verdict and judgment were manifestly against the weight of the evidence, and (2) that the trial court erred in refusing to give to the jury two instructions offered by plaintiff. (223 Ill. App. 643, opinion filed December 30, 1921, but not published). The case was redocketed in the Municipal court, and, in June, 1923, upon the third trial, the jury returned a verdict in defendant's favor and a judgment for costs was entered against plaintiff and he perfected the present appeal.

In our former opinion, to which reference is made, we stated the issues as presented by the pleadings and the facts as disclosed from the evidence introduced on the second trial. After reviewing the evidence contained in the present record, which is substantially the same as on said second trial, we are of the opinion that the verdict and judgment now in question are so manifestly against the weight of the evidence as to require a reversal of the judgment and a remandment of the cause. No



58182

100 - 1000

THE UNITED STATES OF AMERICA

IN SENATE

331.1.332

U. S. SENATE  
100 - 1000  
100 - 1000  
100 - 1000

THE UNITED STATES OF AMERICA

IN SENATE

In this case, evidence is presented, that the  
from these very things, all testimony is given in the  
evidence. After the first trial in December, 1933, the court  
evidence against the motion for a new trial. After the second  
trial in February, 1934, judgment was entered against defendant  
for life and he was sentenced to life imprisonment and the judgment  
was reversed and the case remanded with the grounds (1) that the  
evidence was insufficient to establish the guilt of the  
defendant, and (2) that the trial court erred in refusing to give  
to the jury the instruction proposed by defendant. (See 111, 112, 113, 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 141, 142, 143, 144, 145, 146, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176, 177, 178, 179, 180, 181, 182, 183, 184, 185, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000)

brief and argument on behalf of defendant has been filed in this court. Counsel for plaintiff not only contend that the judgment should be reversed, but that judgment should be entered here against defendant for \$400, the amount of plaintiff's claim. As the case was tried before a jury, we are not authorized to enter such a judgment in favor of plaintiff. (City of Spring Valley v. Spring Valley Coal Co., 173 Ill. 497, 506; North Side Lash & Door Co. v. Goldstein, 286 Ill., 209, 212; Knight v. Seney, 296 Ill., 11, 22).

The judgment is reversed and the cause is remanded for a new trial.

REVERSED AND REMANDED.

Fitch and Barnes, JJ., concur.



1. The first of these is the fact that the Government has been unable to secure the necessary funds to carry out its policy of non-interference in the internal affairs of the Republic of China. This has been due to a variety of factors, including the fact that the Government has been unable to secure the necessary funds to carry out its policy of non-interference in the internal affairs of the Republic of China.

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

1997

1980-1981, 1982-1983, 1984-1985, 1986-1987, 1988-1989, 1990-1991, 1992-1993, 1994-1995, 1996-1997, 1998-1999, 2000-2001, 2002-2003, 2004-2005, 2006-2007, 2008-2009, 2010-2011, 2012-2013, 2014-2015, 2016-2017, 2018-2019, 2020-2021, 2022-2023, 2024-2025, 2026-2027, 2028-2029, 2030-2031, 2032-2033, 2034-2035, 2036-2037, 2038-2039, 2040-2041, 2042-2043, 2044-2045, 2046-2047, 2048-2049, 2050-2051, 2052-2053, 2054-2055, 2056-2057, 2058-2059, 2060-2061, 2062-2063, 2064-2065, 2066-2067, 2068-2069, 2070-2071, 2072-2073, 2074-2075, 2076-2077, 2078-2079, 2080-2081, 2082-2083, 2084-2085, 2086-2087, 2088-2089, 2090-2091, 2092-2093, 2094-2095, 2096-2097, 2098-2099, 2100-2101, 2102-2103, 2104-2105, 2106-2107, 2108-2109, 2110-2111, 2112-2113, 2114-2115, 2116-2117, 2118-2119, 2120-2121, 2122-2123, 2124-2125, 2126-2127, 2128-2129, 2130-2131, 2132-2133, 2134-2135, 2136-2137, 2138-2139, 2140-2141, 2142-2143, 2144-2145, 2146-2147, 2148-2149, 2150-2151, 2152-2153, 2154-2155, 2156-2157, 2158-2159, 2160-2161, 2162-2163, 2164-2165, 2166-2167, 2168-2169, 2170-2171, 2172-2173, 2174-2175, 2176-2177, 2178-2179, 2180-2181, 2182-2183, 2184-2185, 2186-2187, 2188-2189, 2190-2191, 2192-2193, 2194-2195, 2196-2197, 2198-2199, 2200-2201, 2202-2203, 2204-2205, 2206-2207, 2208-2209, 2210-2211, 2212-2213, 2214-2215, 2216-2217, 2218-2219, 2220-2221, 2222-2223, 2224-2225, 2226-2227, 2228-2229, 2230-2231, 2232-2233, 2234-2235, 2236-2237, 2238-2239, 2240-2241, 2242-2243, 2244-2245, 2246-2247, 2248-2249, 2250-2251, 2252-2253, 2254-2255, 2256-2257, 2258-2259, 2260-2261, 2262-2263, 2264-2265, 2266-2267, 2268-2269, 2270-2271, 2272-2273, 2274-2275, 2276-2277, 2278-2279, 2280-2281, 2282-2283, 2284-2285, 2286-2287, 2288-2289, 2290-2291, 2292-2293, 2294-2295, 2296-2297, 2298-2299, 2300-2301, 2302-2303, 2304-2305, 2306-2307, 2308-2309, 2310-2311, 2312-2313, 2314-2315, 2316-2317, 2318-2319, 2320-2321, 2322-2323, 2324-2325, 2326-2327, 2328-2329, 2330-2331, 2332-2333, 2334-2335, 2336-2337, 2338-2339, 2340-2341, 2342-2343, 2344-2345, 2346-2347, 2348-2349, 2350-2351, 2352-2353, 2354-2355, 2356-2357, 2358-2359, 2360-2361, 2362-2363, 2364-2365, 2366-2367, 2368-2369, 2370-2371, 2372-2373, 2374-2375, 2376-2377, 2378-2379, 2380-2381, 2382-2383, 2384-2385, 2386-2387, 2388-2389, 2390-2391, 2392-2393, 2394-2395, 2396-2397, 2398-2399, 2400-2401, 2402-2403, 2404-2405, 2406-2407, 2408-2409, 2410-2411, 2412-2413, 2414-2415, 2416-2417, 2418-2419, 2420-2421, 2422-2423, 2424-2425, 2426-2427, 2428-2429, 2430-2431, 2432-2433, 2434-2435, 2436-2437, 2438-2439, 2440-2441, 2442-2443, 2444-2445, 2446-2447, 2448-2449, 2450-2451, 2452-2453, 2454-2455, 2456-2457, 2458-2459, 2460-2461, 2462-2463, 2464-2465, 2466-2467, 2468-2469, 2470-2471, 2472-2473, 2474-2475, 2476-2477, 2478-2479, 2480-2481, 2482-2483, 2484-2485, 2486-2487, 2488-2489, 2490-2491, 2492-2493, 2494-2495, 2496-2497, 2498-2499, 2500-2501, 2502-2503, 2504-2505, 2506-2507, 2508-2509, 2510-2511, 2512-2513, 2514-2515, 2516-2517, 2518-2519, 2520-2521, 2522-2523, 2524-2525, 2526-2527, 2528-2529, 2530-2531, 2532-2533, 2534-2535, 2536-2537, 2538-2539, 2540-2541, 2542-2543, 2544-2545, 2546-2547, 2548-2549, 2550-2551, 2552-2553, 2554-2555, 2556-2557, 2558-2559, 2560-2561, 2562-2563, 2564-2565, 2566-2567, 2568-2569, 2570-2571, 2572-2573, 2574-2575, 2576-2577, 2578-2579, 2580-2581, 2582-2583, 2584-2585, 2586-2587, 2588-2589, 2590-2591, 2592-2593, 2594-2595, 2596-2597, 2598-2599, 2600-2601, 2602-2603, 2604-2605, 2606-2607, 2608-2609, 2610-2611, 2612-2613, 2614-2615, 2616-2617, 2618-2619, 2620-2621, 2622-2623, 2624-2625, 2626-2627, 2628-2629, 2630-2631, 2632-2633, 2634-2635, 2636-2637, 2638-2639, 2640-2641, 2642-2643, 2644-2645, 2646-2647, 2648-2649, 2650-2651, 2652-2653, 2654-2655, 2656-2657, 2658-2659, 2660-2661, 2662-2663, 2664-2665, 2666-2667, 2668-2669, 2670-2671, 2672-2673, 2674-2675, 2676-2677, 2678-2679, 2680-2681, 2682-2683, 2684-2685, 2686-2687, 2688-2689, 2690-2691, 2692-2693, 2694-2695, 2696-2697, 2698-2699, 2700-2701, 2702-2703, 2704-2705, 2706-2707, 2708-2709, 2710-2711, 2712-2713, 2714-2715, 2716-2717, 2718-2719, 2720-2721, 2722-2723, 27

29835  
377 - 29035

HARRY C. PERROTTET,  
Appellee.

vs.

GARRETT BARRY,  
Appellant.

387a  
234 I.A. 625  
APPEAL FROM

MUNICIPAL COURT  
OF CHICAGO.

MR. PRESIDING JUSTICE GRIMLEY DELIVERED THE OPINION OF THE COURT.

On May 4, 1923, the Municipal Court of Chicago dismissed Barry's petition, filed by virtue of certain provisions contained in section 21 of the Municipal Court Act, to vacate a judgment for \$500 rendered against him on January 30, 1923. This appeal followed.

In July, 1922, the automobiles of the parties collided at or near the intersection of Normal Boulevard and 59th Street, Chicago, and both cars were damaged. Barry brought suit against Perrottet in said Municipal Court, case No. 939,459, and, while the suit was pending, Perrottet, on January 3, 1923, commenced a counter suit, Case No. 993,099, against Barry claiming damages of \$500 to his car by reason of Barry's negligence. In the last mentioned suit Barry entered his appearance by attorney, and demanded a jury trial, and thereafter in apt time, on January 16, 1923, filed with the clerk of the Municipal Court an affidavit of merits, claiming that at the time of the collision Perrottet's car was being negligently operated, and denying any negligence in the operation of his (Barry's) car, or that Perrottet's car was damaged to the extent of \$500. The affidavit of merits is properly entitled in the cause "Harry C. Perrottet vs. Garrett Barry." but the number thereon is "939,459." It bears the file



288

1888

288

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

1888

mark of the clerk as of said date. Apparently the clerk put the paper among the files in case No. 989,499, in which Barry was the plaintiff, and it was not registered in case No. 993,099, in which Barry was the defendant. On January 29th, it not appearing that Barry had filed an affidavit of merits in case No. 993,099, within the proper time, he was defaulted for want of such affidavit, and on the following day the judgment in question against Barry was entered. It appears from the record that, preceding the entry of the judgment, the cause came on for trial before the court "without a jury," that Perrottet was present, that Barry was absent and not represented, and that the court after hearing evidence found Barry guilty as charged, and assessed Perrottet's damages at \$500. It further appears that neither Barry nor his attorneys learned of the entry of the judgment until about 70 days thereafter, when an execution was served, and that on April 14, 1923, Barry, by his attorneys and with leave of court, filed a verified petition to vacate the judgment.

In the petition the facts substantially as above outlined, as well as facts showing that Barry had a meritorious defense to Perrottet's suit, were set forth, and Barry asked that the default and judgment be vacated and set aside "by reason of a mistake of fact by the clerk of the court in failing to keep defendant's affidavit of merits in the files of this case." On April 30th, Perrottet, by his attorney, filed a demurrer to the petition, and also a plea and an answer. On the hearing the court overruled Perrottet's demurrer, but sustained his plea and dismissed Barry's petition. The plea alleges that Barry's said affidavit of merits "was not, through the mistake and error of the clerk of the court, placed in the wrong court file," but





that the same "was wrongfully filed in said other cause pending in this court by the clerk \* \* because of the negligence of said petitioner's attorneys in the preparation of said affidavit of merits for filing, or someone in their office." The bill of exceptions discloses that on the hearing the only evidence introduced was a copy of said affidavit of merits, which, as above mentioned, appears to be correctly entitled as to the parties plaintiff and defendant, but has thereon the number "989,459" instead of the number "993,099." We do not think that the evidence sufficiently sustains the essential allegation contained in Ferrottet's plea, viz, that the mistake was caused by the negligence of the attorneys for Barry, or someone in their office, in putting on the affidavit of merits an erroneous number. It does not sufficiently appear that said attorneys, or anyone in their employ, were guilty of negligence in this regard, but it does appear that the affidavit of merits, properly entitled as to the parties plaintiff and defendant, was in good faith filed with the clerk in apt time. We think there was such a mistake made by the clerk as warrants the vacation of the judgment under the provisions of section 21 of the Municipal Court Act (Domitski v. American Linseed Co., 117 Ill. App. 292), and that, to prevent a failure of justice (Sec. 19 Municipal Court Act), the order or judgment appealed from should be reversed and the cause remanded. Accordingly, the judgment of the Municipal Court dismissing Barry's petition is reversed, and the cause is remanded with directions that the Municipal Court vacate the default taken against Barry, and also vacate the judgment for \$500 rendered against him on January 30, 1923, and that there be a trial upon the merits of the issues as presented by Ferrottet's statement of claim and Barry's said affidavit of merits.

REVERSED AND REMANDED WITH DIRECTIONS.

Fitch and Barnes, JJ., concur.





3818a

ABRAHAM CHESLER,  
Complainant and Appellee,

vs.

CHARLES A. BRILLOW et al.,  
Defendants.

234 I.A. 625

APPEAL FROM SUPERIOR COURT

OF COOK COUNTY.

On Appeal of CHARLES A. BRILLOW,  
Appellant.

MR. PRESIDING JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

By this appeal Charles A. Brillow seeks to reverse a decree of the Superior court of Cook County, entered July 19, 1923, wherein it was adjudged that the record of a certain contract between Brillow and one Levi S. Pierson, dated April 16, 1920, and recorded in the recorder's office of Cook County on July 22, 1920, be removed as a cloud upon complainant's title to certain real estate, improved by a three-story apartment building containing 16 apartments, in said county, and that George J. Haberer, one of the defendants, forthwith return to Brillow the sum of \$1,000.

Pierson, a resident of Indianapolis, Indiana, was the owner of the premises on April 16, 1920, the date of the contract. On July 21, 1920, Pierson declared the contract terminated on account of Brillow's failure to purchase the premises under the terms set forth, and so notified Brillow. On the following day Haberer, the escrow agent, at the request of Brillow's attorney, delivered the contract to said attorney for the purpose of recordation, and on the same day the latter recorded it without Pierson's knowledge or consent. On August 24, 1920, Pierson, then a widower, sold and deeded the premises to Sophia Gold for the same consideration that he was to receive from Brillow under the contract in question, viz, \$48,000 net. On May 6, 1921, the present action was



1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

1917

commenced by Sophia Gold filing her bill to remove the record of the contract as a cloud upon her title. On February 3, 1922, Abraham Chesler filed his petition, representing that he had purchased the premises from Sophia Gold, and asking to be substituted as complainant and for leave to file an amended and supplemental bill, praying for the same relief. The petition was granted and such bill filed, in which Haberer was made an additional defendant, and subsequently the cause was put at issue. On April 25, 1923, after it had been set for trial and had appeared on the trial call of Judge Foell, Brillow filed a cross-bill, making Chesler, Pierson and Sophia Gold defendants and praying for a specific performance of the contract. This cross-bill was not put at issue as to any of said defendants thereto until after the issues, made by complainant's amended and supplemental bill and answers thereto, had been tried in open court before Judge Foell and he had announced his decision. During said hearing, more than two years after Pierson had conveyed the premises to Sophia Gold, Brillow tendered to Pierson in open court the sum of \$50,000, on condition that the latter deliver to Brillow a warranty deed to the premises and a guaranty policy covering the same, which tender was refused. Brillow never made any previous tender, and Pierson had no interest in the premises after his said conveyance to Sophia Gold.

According to the contract Brillow agreed to purchase the premises for \$49,440 (including brokers' commissions of \$1440) and to assume as a part of said price an existing first mortgage indebtedness of \$24,500, and to pay the balance "within five days after the title has been examined and found good, or accepted by him" and Pierson agreed to sell the premises at said price and to convey to Brillow, his heirs or assigns, a good and merchantable title thereto by general warranty deed, but subject to existing leases (Brillow to be entitled to rents from date of de-





livery of deed), certain taxes and assessments mentioned, party wall agreements, building line restrictions of record, etc. The contract stated that Brillow had paid \$1,000 to Haberer as earnest money, to be applied on the purchase when consummated, and that Pierson should within a reasonable time furnish a merchantable abstract of title, or merchantable copy, or a title guaranty policy made by the Chicago Title & Trust Co. It was further provided that the contract and said earnest money should be held by Haberer for the mutual benefit of the parties concerned, and that

"In case material defects be found in said title, and so reported, then, if such defects be not cured within sixty days after such notice thereof, this contract shall, at the purchaser's option become absolutely null and void, and said earnest money shall be returned; notice of such election to be given to the vendor; but the purchaser may nevertheless elect to take such title as it then is, and in such case the vendor shall convey, as above agreed; provided, however, that such purchaser shall have first given a written notice of such election, within ten days after the expiration of the said sixty days, and tendered performance hereof on his part. In default of such notice of election to perform, and accompanying tender, within the time so limited, the purchaser shall, without further action by either party, be deemed to have abandoned his claim upon said premises, and thereupon this contract shall cease to have any force or effect as against said premises, or the title thereto, or any right or interest therein, but not otherwise.

Should said purchaser fail to perform this contract promptly on his part, at the time and in the manner herein specified, the earnest money paid as above, shall, at the option of the vendor, be retained by the vendor as liquidated damages, and this contract shall thereupon become and be null and void. Time is of the essence of this contract, and of all the conditions hereof."

In the decree, the court, after stating that jurisdiction was retained for the purpose of trying the issues under the cross-bill, found inter alia that the written portions of the contract (it being <sup>on a</sup> printed form) were in Brillow's handwriting; that Brillow also wrote in his own handwriting a letter, dated April 16, 1920, from Haberer to Emil C. Rasmann (Pierson's broker) at Indianapolis, and enclosed the contract and letter in an envelope, and mailed the same, for the purpose of obtaining Pierson's signature to the contract; that the contract and letter show that Brillow



The above results of the various experiments, and that the material was sold almost entirely as sold by the maker, by the Chicago firm, is not further pursued. It is, of course, not necessary to say, at this point, that the material is sold almost entirely as sold by the maker, by the Chicago firm, is not further pursued.

[illegible][illegible]

then had knowledge that he was to pay, and that Haberer and Hasman were to divide, the broker's commission of \$1440; that Hasman submitted the draft of contract to Pierson, obtained his signature thereto, and within two or three days returned it, together with a guaranty policy issued by the Chicago Title & Trust Co., to Haberer, who thereafter ordered a continuation, and said company made its written report, down to and including May 5th, dated May 12th, 1920, and delivered the same to Haberer; and that Haberer delivered said report to Brillow, who, on May 21, 1920, delivered to Haberer a written notice, together with the report, stating that the report showed title in Pierson, subject to five objections, requesting that "all material objections" be cured promptly, and further stating that there should be "no difficulty in this matter, as the most important thing you have to do is to procure a release from the rent assignment."

The court further found that, although Pierson was ready, able and willing to convey the premises under the terms of the contract and, with his wife who was then living, had signed and acknowledged (but not delivered) a warranty deed to Brillow, yet the sale was never consummated; that the only material objections to the title (excepting those subject to which Brillow had agreed in the contract to take title), were a trust deed to one Charles C. Frank, dated May 15, 1917, and executed by one Anderson and wife, and an assignment of rents to said Frank, bearing the same date; that the indebtedness secured by the Frank trust deed was fully paid on or before June 17, 1918, and Frank on said date executed and delivered to Pierson a release deed, releasing said trust deed to him, and on the same day executed and delivered to Pierson a release of said assignment of rents; that Pierson thereafter had said releases in his possession but had not caused them to be filed for record; and that the same were not filed for record in the



then had knowledge that he was in New York, and that the  
were to divide, the father's knowledge of this; that the  
with the facts of contact in New York, which was  
there, and which was as then was known to, and which was  
a knowledge which was not in the New York State  
Hobart, who therefore passed a considerable, and who was  
made the subject of, and to the knowledge of the  
1841, 1842, and delivered the same to Hobart; and that  
delivered said report to Hobart, who, on May 12, 1842, delivered  
to Hobart a written report, signed with the name of  
that the report stated that he had been in New York, and  
thereafter that "all reported statements" of which Hobart, and  
further stating that Hobart was "in New York" in the month  
as the most important thing was to be in New York in the  
from the first meeting."

The report stated that Hobart was  
Hobart, who was written to Hobart by Hobart, and who was  
the subject of, and who was in New York, and who was  
delivered (but not delivered) a written report to Hobart, and  
the report was written by Hobart, and who was in New York  
to the fact (stating that Hobart was in New York, and who  
in the report to Hobart, and who was in New York, and who  
Hobart, dated May 12, 1842, and signed by Hobart, and who  
and an assignment of title to said report, and who was in  
that the assignment was made by Hobart, and who was in New York  
on or before June 12, 1842, and who was in New York, and who  
issued to Hobart a written report, signed with the name of  
him, and on the same day received and delivered to Hobart a  
Hobart of which assignment of title, and Hobart, and who was  
and Hobart, and who was in New York, and who was in New York

recorder's office of Cook county until August 2, 1930.

The court further found that early in June, 1930, Pierson called upon Brillow at his office in Chicago, exhibited said releases signed by Frank, and asked Brillow to close the deal; that on July 7, 1930, Pierson again came to Chicago, bringing with him said releases, and at Haberer's office drafted a proposed agreement for the sale of the premises to Brillow, which provided for the payment by Brillow to Pierson of \$1,000 and for an extension of time for 60 days for consummating the purchase, and called upon Brillow, asking him to either close the deal or execute and pay for the extension agreement, but that Brillow refused to do either; that on July 21, 1930, Pierson, having said releases with him, again called on Brillow in Chicago, and demanded that he close the deal, but Brillow refused; that thereupon Pierson stated that he declared the contract terminated, and thereafter saw Haberer and demanded the return of said guaranty policy, and subsequently obtained the same, on Haberer's order, from the Chicago Title & Trust Co. And the court further found that Brillow never at any time elected to take the title as it was.

The court further found that Haberer was the agent of Pierson in some respects, but that he went outside of such agency, was not Pierson's loyal agent but was partial to Brillow; that it was Haberer's duty to hold the contract and earnest money for the benefit of both parties, and that he violated his duty to Pierson in delivering the contract to Brillow's attorney for recordation; that Haberer received said \$1,000 earnest money from Brillow in the form of a check, dated April 16, 1930, and drawn by Brillow on a Chicago bank and payable to Haberer; that Haberer held said check, uncertified, until July 26, 1930, when it was paid by the bank; that he still has in his possession said sum of \$1,000; and that it would be inequitable to allow him to keep the same.



Journal of Management Education 33(10)

*Journal of Management Education* 26(7) 809-820

WILEY-INTERSCIENCE, JOHN WILEY & SONS, INC., NEW YORK, N. Y.

Downloaded from www.ascelibrary.org by Seattle University on 06/27/14. Copyright ASCE, For All Rights Reserved, No part of this document may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage or retrieval system, without permission in writing from ASCE.

1. The first group of people who are interested in the study of the history of the United States are the people who are interested in the history of the United States.

Received 2 October 2011; accepted 2 November 2011; first published online 12 December 2011

\_\_\_\_\_

[illegible]

© 2000 Blackwell Science Ltd *Journal of Internal Medicine* 247: 103–110

[illegible]

1. The first of these is the fact that the majority of the population of the United States is now living in urban areas. This is a result of the process of urbanization, which has been going on since the beginning of the 20th century. The population of the United States has increased from about 100 million in 1900 to over 200 million in 1950, and the majority of this increase has been in urban areas. This has led to a concentration of population in a few large cities, which has in turn led to a number of problems, such as overcrowding, pollution, and traffic congestion.

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

[illegible]

100-443887-100

© 2000 Blackwell Science Ltd, *Journal of Internal Medicine* 247: 399–406

© 2000 Kluwer Academic Publishers. Printed in the Netherlands

It is contended by counsel for Brillow that some of the material findings in the decree are contrary to the weight of the evidence, and that the decree is against the law. After a review of the record we cannot agree with the contentions. It is well settled that the findings of a chancellor, based upon the conflicting testimony of witnesses, whom he saw and heard testify, will not be disturbed upon appeal unless clearly and palpably erroneous. (Village of Itasca v. Schroeder, 183 Ill., 192, 212; Kinnah v. Kinnah, 184 Ill. 284, 286; Woods v. Youngren, 272 Ill. 521, 525). While the testimony of Brillow is in sharp conflict to that of Pierson on some material points, particularly as to what occurred at the interviews in the former's office in Chicago on July 7 and July 21, 1920, we are unable to say that the court's findings are clearly erroneous. And it is the law that in case a contract for the sale of land is placed in the hands of a third person to be held in escrow it should not be placed of record without the agreement of the parties, and if it is recorded a court of chancery may set it aside in a proper case as a cloud upon the owner's title. (Snear v. Froehlich, 229 Ill. 397, 404). And it is also the law that where a contract for the sale of land has been recorded, and, for reasons not appearing on its face or of record, it is no longer enforceable, a court of equity in a proper case may remove the record of the same as a cloud. (Roby v. South Park Commissioners, 215 Ill., 200, 203). And, as it seems to us, Brillow's rights by virtue of the contract either ended when Pierson elected to terminate it (for Brillow's fault, as the evidence shows), or ended when Brillow did not elect, and serve notice, etc., to take the title as it was, within the time limited by the contract. (Mitchell v. White, 295 Ill., 138, 139; Miller v. Shea, 300 Ill., 180, 185).

And we do not think that the court erred in the rulings



[illegible]

as to the admission of certain evidence offered by complainant and the rejection of certain evidence offered by Brillow. While the admitted letters and telegrams to and from Haberer may not have been binding upon Brillow they were clearly admissible for the purpose of impeaching some of Haberer's testimony.

Finding no reversible error in the record, the decree of the Superior court will be affirmed.

AFFIRMED.

Fitch and Earnes, JJ., concur.





CARRIE A. COOPER et al., Adminis-  
trators of the Estate of H. W.  
Cooper, Deceased,  
Complainants and Appellees,

vs.

EMPIRE SECURITY COMPANY et al.,  
Defendants.

On Appeal of C. B. LITTLE and  
P. M. STARNES,  
Appellants.

3879a  
234 I. A. 625

APPEAL FROM CIRCUIT

COURT OF COOK COUNTY.

MR. PRESIDING JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

This is a second appeal in the case. On January 22, 1922, the Circuit court dismissed for want of equity the bill filed during the lifetime of H. W. Cooper, and the first appeal (Case No. 27735) was taken from that decree by the administrators of his estate. On December 5, 1922, this Appellate court reversed the decree and remanded <sup>the cause</sup> with directions to the court to enter a decree against said defendants (Empire Security Company, C. B. Little, P. M. Starnes and Louis H. Grimes) and in favor of complainants, in accordance with the prayer of the bill, upon complainants tendering in open court said two certificates of stock for cancellation, and giving credit to the defendants for the amount of said July dividend of \$175, together with legal interest thereon from July 1, 1917." The prior opinion of this court is reported (227 Ill. App. 161), to which reference is made. The issuance of a writ of certiorari was denied by the Supreme court.

After the mandate had been filed, the Circuit court, on May 22, 1923, entered the decree from which the present appeal is taken. Included in the court's findings is the finding that complainants tendered in open court said two certificates of stock for cancellation and offered to give credit to defendants for the amount of said July dividend, \$175, with interest from July 1,



1944

LEGAL & CHANCERY  
Solicitors for the  
Trust, etc.

1944

THE TRUSTEES OF THE  
TRUST, etc.

IN WITNESS WHEREOF  
I have hereunto set my hand  
at London, this 1st day of  
January, 1944.

Witness my hand

28.1.44

THE TRUSTEES OF THE

THE TRUSTEES OF THE TRUST, etc.

THIS IS A SPECIAL POWER OF ATTORNEY

IN FAVOR OF THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

THE TRUSTEES OF THE TRUST, etc.

1917. And the court adjudged and decreed that the 100 shares of the common stock and the 100 shares of the preferred stock of the Empire Security Company (for which H. W. Cooper paid \$12,500 in April, 1917) be cancelled; that his name and the names of his heirs or administrators be removed from the list of stockholders of said company; and that said defendants pay to complainants, as administrators, the sum of \$15,697.03, with interest from the date of the entry of the decree until paid. It appears from the decree that said sum of \$15,697.03 was arrived at by adding to the principal sum of \$12,500, interest thereon at 5% per annum from November 26, 1917, (the date of the filing of the bill) to the date of the entry of the decree, and deducting said \$175 and interest thereon at the same rate from July 1, 1917.

After the present praecepta record was filed in this Appellate court, on motion of appellants it was ordered that the record, abstracts and briefs, filed on the former appeal, be considered in the present appeal. The bill prayed for an accounting; that the purchase by H. W. Cooper of said 200 shares of stock be decreed to have been obtained through fraud and deceit; that the sale be set aside, the stock upon surrender be cancelled and his name be removed from the books of the company as a stockholder; and that defendants be decreed to pay said sum of \$12,500 "and interest thereon."

Counsel for appellants urge three grounds for a reversal of the decree (1) that the Circuit court, notwithstanding the directions contained in the mandate, should have ordered an accounting; (2) that the decree against appellants, Little and Starnes, should not have been in excess of \$2,500; and (3) that the court erred in allowing interest on said sum of \$12,500. We do not think there is merit in any of the points. No further accounting was necessary to determine the amount due complainants. It was not





disputed that H. W. Cooper had paid \$12,500 for the stock. As to the liability of appellants for the entire amount sought to be recovered, we said in our former opinion (p. 178): "And the defendants, Little, Starnes and Grims, directors of and in control of the company, are also liable to complainant in this proceeding, for 'all who get gain by fraud must bear the legal consequences of the wrong they do.' (Vreeland v. New Jersey Stone Co., 29 N. J. Eq. 188, 195). And their liability is not limited to the sums of money they severally received," (citing cases). And we think that the court properly included interest on said sum of \$12,500 from the date of the filing of the bill. It has several times been decided by our Supreme Court that, in equity, interest is allowed because of equitable considerations and that a court of equity may give or withhold interest as, under all circumstances of the case, it deems equitable and just. (Keady v. White, 168 Ill. 76, 83; Golden v. Cervenka, 278 Ill. 409, 435). In the Cervenka case it is said: "Neither the bill nor the cross-bill makes any claim for interest, and the case is not one of those in which the statute provides that interest shall be allowed. In equity, however, interest is allowed because of equitable considerations. \* \* The Central Trust Company having received funds which belonged to the trust and savings bank, if it retained them without authority of law, should account for interest from the time a demand was made for payment, which was when the cross-bill was filed. Whittensare v. People, 227 Ill. 453." The circumstances shown in the present case are such that a court of equity is clearly justified in allowing interest.

The decree of the Circuit court is affirmed.

AFFIRMED.

Fitch and Barnes, JJ., concur.





3820a

UNIVERSAL VENDING SERVICE COMPANY,  
a corporation,  
Appellee,

vs.

ISRAEL LUCK,  
appellant.

234 I.A. 626

APPEAL FROM  
MUNICIPAL COURT  
OF CHICAGO.

MR. PRESIDING JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

This is an action in forcible detainer, commenced on November 3, 1922, to recover possession of the following described premises in Chicago: "The newstand and concession space now occupied by Israel Luck in the Division Street Station of the Logan Square Division of the Metropolitan West Side Elevated Railway Company." The cause was tried before a jury. Certain documentary evidence was introduced by plaintiff and its superintendent testified. At the conclusion of plaintiff's evidence the court refused defendant's motion for a directed verdict in his favor, whereupon defendant testified as a witness in his own behalf. At the conclusion of all the evidence, the court instructed the jury to return a verdict finding defendant guilty of unlawfully withholding from plaintiff the possession of the premises and that the right to the possession thereof was in plaintiff. The jury returned such a verdict and on April 12, 1923, judgment was entered that plaintiff recover possession, etc. This appeal followed.

The undisputed facts as disclosed from the evidence are as follows: On December 31, 1918, the parties entered into a written agreement, whereby plaintiff for a stipulated monthly rental leased the premises to defendant, or gave him a license



105279

RECEIVED  
JAN 10 1968

parallel

This is in contrast to the results obtained by

Approved by \_\_\_\_\_

See also: [Cognitive Psychology](#), [Developmental Psychology](#), [Educational Psychology](#), [Environmental Psychology](#), [Health Psychology](#), [Industrial Psychology](#), [Organizational Psychology](#), [Personality Psychology](#), [Social Psychology](#), [Sports Psychology](#), [Theoretical Psychology](#)

Copyright © 2004 by John Wiley & Sons, Inc.

bioRxiv preprint doi: <https://doi.org/10.1101/2017.09.20.189001>; this version posted September 20, 2017. The copyright holder for this preprint (which was not certified by peer review) is the author/funder, who has granted bioRxiv a license to display the preprint in perpetuity. It is made available under aCC-BY-NC-ND 4.0 International license.

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

Downloaded At: 11:53 11 September 2009

Approved: \_\_\_\_\_

and the following table shows a summary of the results of the analysis.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

and further, the results are not fully consistent with the model.

Copyright © 2004 by John Wiley & Sons, Inc.

200. The major number will always be the same with respect to all the following items.

© 2000 by The McGraw-Hill Companies, Inc. All rights reserved. Printed in the United States of America. This book is printed on acid-free paper.

THIS DOCUMENT CONTAINS NEITHER RECOMMENDATIONS NOR CONCLUSIONS OF THE NATIONAL BUREAU OF STANDARDS. IT IS THE PROPERTY OF THE NATIONAL BUREAU OF STANDARDS AND IS LOANED TO YOUR AGENCY; IT AND ITS CONTENTS ARE NOT TO BE DISTRIBUTED OUTSIDE YOUR AGENCY.

The following table shows the results of the regression analysis:

© 1987 by American Psychological Association or one of its allied publishers. This article is intended solely for the personal use of the individual user and is not to be disseminated broadly.

...the ... ..

to occupy and use the same, for certain purposes mentioned, for the period beginning January 1st, and ending January 31, 1919, "and from month to month thereafter" until terminated by plaintiff "at any time" by it giving to defendant a five days' notice in writing of its intention so to do. The agreement is substantially the same as is set forth in the opinion of this appellate court in the case of Universal Vending Service Co. v. Demco, No. 28448, (opinion filed November 27, 1923, not yet published.) Defendant entered into possession under the lease on January 1, 1919, and thereafter paid the monthly rental to plaintiff. On October 20, 1922, plaintiff caused to be personally served on defendant a notice in writing terminating defendant's tenancy of the premises on October 31, 1922, and directing him to surrender possession thereof to plaintiff on that day. This he did not do and plaintiff commenced the present action. Defendant was still in possession at the time of the trial. It further appeared that plaintiff was a lessee of the premises, together with other premises, from the "Chicago Elevated Railways," and that defendant held possession as a sub-tenant under plaintiff.

The action in the Demco case, supra, was in forcible detainer under an agreement and notice of termination of the tenancy substantially the same as in the present case, and we held that such an agreement should be regarded as a lease, subject to be terminated upon notice; and that, whether it be construed as a lease of the space, or as merely giving a license or privilege therein, subject to termination upon notice, an action in forcible detainer, brought to recover possession upon the tenant's refusal to surrender after service of the agreed notice, would lie. And we said: "In such action the question





is not in whom is the title to the premises, but is one of possession and the right to possession." (Citing Doty v. Mardick, 83 Ill. 473; Thomason v. Wilson, 46 Ill. App. 398, affirmed in 146 Ill. 384; Thomas v. Olenick, 237 Ill. 137.)

"The question of title cannot be tried, but only the right of possession." (Meier v. Hilton, 257 Ill. 174, 179.) Under the undisputed evidence we think it clear that plaintiff was entitled to recover possession of the premises in the present action and that the court was fully justified in directing a verdict in its favor and in entering the judgment appealed from. Complaint is made that the trial court erred in not allowing defendant to answer a certain question which related to the title of the premises. The court's ruling was proper.

The judgment of the Municipal Court should be affirmed and it is so ordered.

AFFIRMED.

Fitch and Barnes, JJ., concur.



1. The first of the two questions is whether the defendant is a citizen of the United States. The answer to this question is that the defendant is a citizen of the United States.

• **1991**

1974 年 1 月 1 日 至 1974 年 12 月 31 日

3821a

FRANK G. HAJICEK,  
Appellant,

vs.

DAVID T. GOLDBERY et al.,  
Defendants.

EDWARD A. REINICK, ANTON REINICK  
and FRED REINICK,  
Appellees.

234 I.A. 626  
APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

MR. PRESIDING JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

By this appeal Frank G. Hajicek seeks to reverse a decree of the Circuit Court of Cook County, entered March 29, 1923, wherein the court dismissed for want of equity his bill of complaint, filed November 5, 1919, (seeking to have removed a certain affidavit and quit-claim deed, a mortgage, judgments, and mechanics' lien claims, as clouds upon his alleged title to the premises in question), and granted relief under the cross-bill to redeem, filed December 14, 1921, of Edward A. Reinick, Anton Reinick and Fred Reinick; and wherein the court, following the report of the master, found that the deed to Hajicek, under which he claims title to the premises, was not an absolute conveyance but was given solely as additional security for an indebtedness due him upon mortgages held by him, and further found that the Reinicks were the owners of the premises, subject to said mortgages, and were entitled to an accounting for the rents and profits received by Hajicek since he took possession, and decreed that upon the ascertainment of the net amount due to him, and the payment thereof, he convey the premises by quitclaim deed to the Reinicks. The cause was taken on appeal to the Supreme Court, but on October 30, 1923,



850 4159

CONJUGATE & RELATED

2

The following is a list of the names of the persons who have been appointed to the various positions in the Department of the Interior, for the year ending June 30, 1900.

it was transferred to this appellate court for the reason that it had been wrongfully appealed to the Supreme Court (309 Ill. 372), and pursuant to the mandate the transcript of the record, etc., were here filed on October 30, 1923.

On November 21, 1922, the master, to whom the cause had been referred to take proofs and report the same together with his conclusions of fact and law, filed his report. The transcript of the evidence discloses that considerable evidence, oral and documentary, offered by opposing parties, was taken before him. Objections to the report were ordered to stand as exceptions. On the hearing before the court all exceptions were overruled and the master's report was in all respects approved and confirmed. Among the master's findings are, in substance, the following:

That the premises in question consist of a lot, 25 x 125 feet, with a frame cottage thereon, and are known as 2737 South Tripp Avenue, Chicago, and in April, 1916, were worth from \$2,800 to \$3,000.

That on December 16, 1916, Edward A. Reinick and wife executed a statutory warranty deed, conveying the premises to Hajicek, and delivered same to him, that it stated on its face that it was given for the consideration of one dollar and other good and valuable considerations, that it was not recorded until February 1, 1917, and that this is the deed under which Hajicek claims title to the premises.

That on September 10, 1906, Maria Kessler, by warranty deed, recorded July 10, 1907, conveyed the premises to John A. Reinick and wife, who, on April 12, 1911, conveyed the premises to Hajicek, as trustee, by trust deed recorded April 14, 1911, to secure their note for \$1,300, due five years after date with interest at 5-1/2 per cent per annum, payable semi-annually;



... was transferred to this ...  
... had been ...  
... and ...

On ...  
... and ...  
... with his ...  
... of the ...  
... and ...  
... after ...  
... first ...  
... systems ...  
... reports ...  
... in ...

That the ...  
... in ...  
... and ...  
... of ...

That on ...  
... a ...  
... and ...  
... that it ...  
... that it ...  
... and ...  
... January ...  
... after ...

That on ...  
... and ...  
... which ...  
... in ...

that on December 14, 1912, John A. Reinick and wife conveyed the premises by warranty deed, recorded April 4, 1913, to Anton Reinick, who, on September 23, 1915, conveyed the premises to Charles Wesley, as trustee, by trust deed recorded September 29, 1915, to secure his note for \$250, due one year after date with interest at 6 per cent per annum, evidenced by two interest notes; that this mortgage was, subsequent to December 16, 1916, purchased by Hajicek; and that on April 5, 1916, Anton Reinick, a bachelor, conveyed the premises by warranty deed, recorded April 10, 1916, to Edward A. Reinick.

That on December 8, 1916, Hajicek filed his bill in the Superior Court of Cook County (case No. 326,357) to foreclose said trust deed from John A. Reinick and wife to him as security for said \$1,300; and that a few days thereafter, December 16, 1916, Edward A. Reinick and wife executed and delivered the warranty deed in question, first above mentioned, to Hajicek, and after Edward A. Reinick had been served with summons in said suit to foreclose.

That on April 16, 1917, Fred Reinick, bachelor, Anton Reinick and wife, and John Reinick, Jr., bachelor, conveyed the premises by quitclaim deed, recorded April 23, 1917, to David W. Goldsby; that on October 18, 1919, Goldsby (by the name of Wyatt D. Goldsby) by mortgage deed, recorded October 19, 1919, conveyed the premises to L. E. Harrison, as mortgagee, to secure Goldsby's two notes of even date for \$3,500 and \$4,000 respectively, due in one year and bearing interest at 6 per cent per annum; and that there appeared of record a statement of levy by the bailiff of the Municipal Court of Chicago, and nine judgments in different courts and in varying amounts, against said Goldsby, prior to his executing said mortgage deed.

That on March 30, 1917, forcible detainer proceedings were commenced by Hajicek in the Municipal Court of Chicago



that on December 21, 1917, there is included in this category

the purchase of machinery and, received July 14, 1917, by

John Smith, who, on December 14, 1917, assigned to William

as Charles Smith, on December 14, 1917, assigned to William

on July 14, 1917, as agent for his own account, the sum of \$100.00

with interest of 6 per cent per annum, assigned by his husband

on July 14, 1917, and, assigned to William on December 14, 1917,

assigned to William on July 14, 1917, and, assigned to William

on December 14, 1917, assigned to William on December 14, 1917,

on July 14, 1917, assigned to William on December 14, 1917,

that on December 14, 1917, assigned to William on December 14, 1917,

the interest of 6 per cent per annum, assigned by his husband

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

on July 14, 1917, and, assigned to William on December 14, 1917,

against certain defendants in possession of the premises; that on April 16, 1917, in said foreclosure proceedings (case No. 326,357) instituted by Hajicek in said Superior Court, on motion of the Reinicks, an injunction was issued against Hajicek restraining the further prosecution of said forcible detainer proceedings; that Anton Reinick moved out of the premises on April 7, 1918; and that on June 27, 1918, by stipulation of the parties, Hajicek's bill and defendant's cross bill in said foreclosure proceedings (case No. 326,357) were dismissed without costs.

That on March 31, 1917, there was filed in the recorder's office of Cook County an affidavit of Anton Reinick, made on behalf of himself and Fred Reinick and John Reinick, Jr., in which it was stated that they claim an interest in the premises and seek to have it established; that Anton Reinick, together with his brothers, Fred and John, Jr., lived on the premises from 1906 to April 7, 1918, during which period no rent was paid to anyone; that in the spring of 1917, Anton Reinick painted the cottage on the property at an expense of \$60, which he borrowed from Goldsby; and that at the time Anton Reinick moved out of the premises, April 7, 1918, Hajicek paid him \$11, for moving expenses, as Hajicek claims, but Reinick claims it was for certain gravel hauled away by Hajicek.

That in January, 1917, Hajicek, upon request of Anton Reinick, delivered a statement to him of the amounts due Hajicek on said two mortgages of \$1300 and \$250, including court costs, fees, and interest up to February 1, 1917, and amounting in all to \$1935.90; that Hajicek testified that when he delivered the statement he said to Reinick, "If you come in on February 1st, these are the figures;" that on January 31, 1917, one Fuerst, engaged in the real estate business, obtained the abstract of title to the premises from Hajicek for the purpose of negotiating a loan thereon and paying off said mortgages; that during February and March, Fuerst made two applications of a building





and loan association for a loan on the premises, but both were refused; that on February 7, 1917, Hajicek wrote said Fuerst, requesting the return of said abstract and saying, "I have given you one week in which to close the deal in the former Reinick property;" that on March 7, 1917, Hajicek again wrote Fuerst requesting the return of the abstract, and saying, "It seems your people are not sincere in this matter;" and that shortly after March 7th, Fuerst returned the abstract to Hajicek.

That Hajicek, in reference to the statement of indebtedness due him (which he gave to Anton Reinick in January, 1917, and before he had recorded the warranty deed to him dated December 16, 1916, from Edward A. Reinick) testified in substance: "I knew Anton Reinick was trying to get money to pay me off and redeem; I told him I would give him a chance to make some money and for him to go and dispose of the property, and that whatever he got above my figures I was willing to give him; \* \* I gave him a certain time to get the money - I think it was until February 1, 1917, (the date he afterwards recorded the warranty deed from Edward A. Reinick); \* \* I just told him he had got time until February 1st, to redeem it; \* \* after that I gave him no more time, but he might have had it if he had wanted it."

That Hajicek has been in possession of the premises from April 7, 1918; that he has collected rents therefrom and has made certain repairs and improvements thereon; that he has paid taxes from the year 1917, and has redeemed from a tax sale under date of June 20, 1918; that in April and May, 1918, he had the building painted, expending \$235.

That Hajicek testified that he paid one dollar to Edward A. Reinick for the signing of said warranty deed of December 16, 1916, and agreed to dismiss the then pending foreclosure suit, commenced on December 8th; that, however, he did not agree to release, nor did he afterwards release, the two mortgages, for





\$1300 and \$250; and that at the time of the execution of said warranty deed Anton Reinick and family and Fred Reinick were in actual, physical possession of the premises.

That John A. Reinick and wife, who at one time owned the premises and in December, 1912, conveyed them to their son, Anton, are both deceased; that John Reinick, Jr., son of John A. and wife, died a bachelor in 1918, leaving him surviving his brothers Edward A., Anton and Fred, as his only heirs at law and next of kin; that Edward A. Reinick paid nothing to his brothers for their interest in the premises when in April, 1916, Anton Reinick conveyed said premises to him; that no money was paid to Goldsby on account of his two notes for \$3,000 and \$4,000, and to secure which he executed said mortgage deed in October, 1919; that said mortgage deed is a cloud upon the title to the premises; that Goldsby, the grantee in the deed from Anton, John, Jr., and Fred Reinick, claims no interest in the premises by reason thereof; that said deed is a cloud upon the title to the premises; and that the various judgments, above mentioned, against Goldsby are not liens upon the premises.

That said two mortgages for \$1300 and \$250, are still held by Hajicek, uncanceled and unreleased; that the conduct of Hajicek, in giving the abstract of title to Fuerst and in stating an account of the amounts due him up to February 1, 1917, and in stating that the Reinicks might have had additional time if they wished, all goes to show that he simply regarded said warranty deed from Edward A. Reinick, dated December 16, 1916, to him as additional security to the mortgages he already had and not as an absolute conveyance; that Hajicek paid no adequate consideration for said warranty deed; that it is not an absolute conveyance and was not so intended by the parties thereto when made; that it was given "for the purpose of giving additional security to Hajicek, and giving him an opportunity to sell the property if



THE NEW YORK PUBLIC LIBRARY, ASTOR LENOX AND TILDEN FOUNDATIONS, 410 FIFTH AVENUE, NEW YORK 17, N. Y.

he could obtain a reasonable price for the same, taking therefrom the amount due him and paying the balance to the Reinicks;<sup>4</sup> that the equitable title to the premises is in Edward A., Fred and Anton Reinick, each owning an undivided one-third interest, subject, however, to said mortgages of \$1300 and \$250, held by Hajicek; and that the equities of the cause are not with Hajicek but with the cross-complainants, said Reinicks.

The master recommended that Hajicek be required to render an account of all rents received by him from the premises from the time he took possession; that an account be taken of what is due and owing him on account of said mortgages, expenses, etc.; that he be paid the net balance due him, and, when paid, that he be directed to convey said premises to said Reinicks by proper deed and to surrender possession to them; that his bill of complaint be dismissed for want of equity, and that the relief prayed for in the cross-bill of the Reinicks be granted.

After a review of the abstract of the record, and the printed briefs and arguments of opposing counsel, we are of the opinion that the findings of the master are amply sustained by the evidence, and that the decree is equitable and should be affirmed.

The main contention of counsel for Hajicek is that the warranty deed of Edward A. Reinick and wife of Hajicek, dated December 16, 1916, should be considered as an absolute conveyance, and not as giving him, merely, additional security for the indebtedness due him under the two mortgages mentioned. When all of the evidence is considered, including certain testimony of Hajicek himself, referred to in the master's report, we are unable to agree with counsel. It is argued that, inasmuch as at the date of the deed there was no personal indebtedness due and owing to Hajicek from Edward A. Reinick, an essential element



[illegible]

THE UNITED STATES OF AMERICA  
DO hereby certify that the within and foregoing is a true and correct copy of the original as the same appears on the records of the Department of the Interior.

After a review of the subject of the ... and the ...  
... and ...  
...  
...  
...  
...  
...  
...

The main character in the story is a young man named John. He is a student at a university and is very intelligent. He is also very kind and helpful. One day, he meets a girl named Mary. They become friends and then fall in love. They get married and have a family. The story ends with them living happily ever after.

necessary to a mortgage, namely an existing indebtedness, is lacking. We think it a sufficient answer to the argument to say that at the time of the execution of the deed there was an existing mortgage on the premises securing an indebtedness of \$1300 to Hajioek, which indebtedness had been contracted by the father and mother of Edward A. Reinick, and said mortgage was then in process of being foreclosed by Hajioek. And it appears that for more than three months after the execution of the deed some of the Reinicks were in actual possession of the premises, and Hajioek made no attempt to take possession or to collect rent. (Swart v. Walling, 42 Ill. 453, 456.) And it also appears that neither when the deed was executed nor thereafter did Hajioek surrender the notes, which were secured by the mortgages which he held, nor did he release said mortgages of record.

Other points are urged by counsel as grounds for a reversal of the decree which, under the facts and circumstances disclosed, we deem to be without merit.

The decree of the Circuit Court is affirmed.

AFFIRMED.

Fitch and Barnes, JJ., concur.





3822a

PETER KLEIN,  
 Appellee,

vs.

HARRIET B. RORLAND,  
 Appellant.

234 I.A. 626

APPEAL FROM SUPERIOR COURT OF  
 COOK COUNTY.

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

This is an appeal from a judgment recovered by plaintiff for \$5000 for personal injuries received November 15, 1915, when he was nearly fifteen years old. He was employed by the Branham Printing Company which occupied offices on the sixth floor of a building owned by defendant. The building was equipped with two elevators, one for passengers in the front part of the building, and the other for freight in the rear part. When carrying or moving large, heavy packages the employees in the building were accustomed and permitted to use and ride in the freight elevator, otherwise they took the passenger elevator.

On the occasion in question plaintiff took a pushcart with packages to the freight elevator entrance on the sixth floor and rang the bell for the purpose of having them taken down for delivery outside of the building, as accustomed to do for his employers. His testimony was to the effect that the elevator not coming up in response to his rings he went down to the fifth floor, and just as he was stepping into the elevator on that floor, for the purpose of riding up where his packages were to be loaded by him on the elevator, the elevator operator took hold of him and shoved and kicked him, and he went through a broken railing and fell from the fifth floor to the fourth floor, a distance of eight to twelve feet.



282.1.1.22

...

...

...

...

...

...

The elevator operator testified that he had been taking up bundles of paper on the car for the Book Printing House on the fifth floor, and while on the way up with a load, heard plaintiff ringing the bell, and shaking and kicking the elevator door on the sixth floor; that he told him to "cut it out;" and that while the elevator was being unloaded at the fifth floor plaintiff came down to that floor; that he told plaintiff to go up stairs "where he belonged;" that plaintiff said he wouldn't, and ran into the offices of the Book Printing House; that he ran after him, got him by the shoulders and shook him; that plaintiff picked up a stick, came out and walked to the elevator and tried to hit him, and backing up in his effort to prod him with the stick, lost his balance at the top of the stairs and fell backwards to the next floor.

The issues as finally submitted to the jury were whether the elevator operator at the time of the assault, if it caused plaintiff's fall and injury, was acting in the scope of his employment as servant of defendant, and whether at that time there existed the relation of carrier and passenger between defendant and plaintiff. As the evidence presented room for controversy as to both questions there is no occasion to discuss appellant's contention that the court erred in not directing a verdict in her behalf.

Nor are we able to say that the verdict was manifestly against the weight of the evidence. It is true that as to the occurrence itself there was only one witness on each side, plaintiff and defendant's <sup>operator.</sup> The jury unquestionably accepted the version of the former. If true, then the assault took place as plaintiff was about to step into the elevator, and the operator thereby prevented his entrance into it. Whether the operator in so doing acted rightfull or wrongfully is not the test of whether he was acting in the scope of his employment. He had charge of the freight elevator, which was run for the specific purpose of carrying large and heavy packages



[illegible]

the same way, will be sufficient to show that

operator.

It was said the station, and the stationer's company, were  
induced to do so. The stationer's company is a small firm  
of which it was said the stationer was a partner in the town  
of the company. It was said the stationer was a partner in the town

up and down for the tenants of the building and at the same time carrying these in charge of the packages. Plaintiff had brought a package in a pushcart for his employer to the elevator on the floor above, and it was for the purpose of getting the same loaded on and carried by the elevator that plaintiff sought to enter it. He was to load them on the elevator, go along with and unload them. That was the custom. It was not essential either to the execution of that purpose, so far as the operator's duty was concerned or the relationship of carrier and passenger existed, that plaintiff should have entered the elevator on any particular floor. While plaintiff may have been properly excluded from the elevator if the packages were being unloaded on the fifth floor at that time, yet such relationship was not destroyed in ejecting him from it, nor was the operator acting outside of the scope of his employment in preventing his entrance. But it was a violation of the duty owing to plaintiff as such passenger, which he became in the act of entering the elevator for such purpose, to use unnecessary force to eject him therefrom.

That persons operating elevators, whether passenger or freight, are common carriers of passengers who are lawfully and rightfully thereon, and are bound by the same degree of care and diligence and subject to like liabilities as in other modes of conveyance, is the settled rule in this State. (Springer v. Ford, 100 Ill. 430, and cases there cited.) Citing cases from other jurisdictions where the principle was applied it was said in Chicago & Eastern M. R. Co. v. Flammann, 103 Ill. 540, where a passenger on a freight train was struck by a brakeman, that while it was a general doctrine applicable in a proper case "that no master is chargeable with the acts of his servant but when he acts in the execution of the authority given him," yet the contract which exists between a common carrier and a passenger is a guaranty on behalf of the





carrier that the passenger should be protected against personal injury from the agents or servants of the carrier in charge of the conveyance. Applying such doctrine to plaintiff's version of the facts, as we think may be done, defendant would be liable.

If, however, the operator's version of the facts be adopted the case would come under the principle evoked by appellant which limits liability of the master to acts of the servant that fall within the scope of his employment, and deems the relation of master and servant suspended when he steps aside from his master's business for some purpose wholly disconnected with his employment. (Johanson v. Johnston Printing Co., 263 Ill. 236).

While juries might differ as to which version is the correct one, it is a settled rule of procedure that this court will not reverse upon the facts unless there is a clear preponderance of the evidence against the jury's verdict. We cannot say that there was in this case.

Two instructions are complained of as having no basis in the evidence tending to show that the servant in committing the assault was acting within the scope of his employment. While there was a conflict of evidence on that point there was ample evidence on which to base the instructions. Without stating them at length we do not agree that they leave out any necessary element.

Complaint is made of the refusal to give an instruction presenting defendant's theory of her case to the effect that there could be no recovery if the assault was committed outside of the master's business and of the duties the operator was called upon to discharge, and if done to accomplish some end personal to the servant. There were various other instructions given at defendant's request which we think covered the doctrine laid down in the refused instruction. Hence there was no error in refusing it.



[illegible]

It is also claimed that the verdict is excessive. Outside of the claimed injury of aggravating plaintiff's impediment of speech in stuttering and stammering the resulting injuries from the assault were not serious and would not call for so large a judgment. No bones were broken and there was no permanent physical injury, aside from a scar on the scalp and some deviation of the septum of the nose.

There was much conflict of evidence both as to the fact whether plaintiff's impediment in that respect was worse after the injury, and whether it could be aggravated by such a shock and injury. It is a subject upon which the character of the testimony leaves us in considerable doubt. If from the evidence the jury believed there was such aggravation, or added "smart money" to the compensatory damages for wilful or gross and outrageous misconduct, as might in their discretion be done for an unprovoked assault (Chicago Tr. Co. v. Mahoney, 230 Ill., 562, 569; Day v. Woodworth, et al., 13 How. (U. S.) 363, 371), yet we think the facts hardly warrant a judgment of that size. We think the evidence clearly shows that plaintiff was a confirmed stutterer at the time of the accident, and many witnesses saw no difference in his speech afterwards. And we are not impressed with the expert testimony offered by plaintiff in support of the theory that such impediment of speech might or could be aggravated by such an injury or shock therefrom. The theories on that subject, as presented by the expert witnesses for each side, are diametrically opposed, and, so far as they are based on scientific reasoning the theory of defendant's experts is the more persuasive. But upon whatever theory the jury assessed the damages we think they are somewhat excessive and that there should be a remittitur of at least \$1000. If such a remittitur is made within ten days the judgment will be affirmed; otherwise it will be reversed and the cause will be remanded.

AFFIRMED IN CASE OF A REMITTITUR TO \$4000.

Gridley, F. J., and Fitch, J., concur.





3823a

854

197 - 28854

IN RE ESTATE OF SAMUEL K. MARTIN,  
deceased.  
On appeal of GILTON B. MARTIN CO.,  
ancillary executor of the last will  
and testament of Samuel K. Martin,  
decd.,

Appellant,

vs.

CENTRAL TRUST COMPANY,  
a corporation, also co-ancillary  
executor of the last will and  
testament of Samuel K. Martin,  
decd.,

Appellee.

234 I.A. 626

APPEAL FROM CIRCUIT COURT,  
COOK COUNTY.

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

The Probate Court of Cook County allowed \$1100 as  
fees to the Central Trust Company of Illinois as co-ancillary  
executor of the last will and testament of Samuel K. Martin.  
On appeal to the Circuit Court from the order a like order was  
entered there, from which this appeal is taken.

Said Samuel K. Martin was a resident of New York,  
and his last will and testament was admitted to probate in  
that state. It named W. B. Martin, the appellant, and said  
trust company, the appellee, as executors. As the trust  
company could not qualify in New York, W. B. Martin became  
the sole executor there, and later, December 3, 1919, a  
petition was filed in the probate court here by him and the  
Central Trust Company, sworn to by him alone, for ancillary  
letters.

At the time of Samuel K. Martin's death he held  
real estate in Cook County, and said trust company (located  
in Chicago) held his two notes for the aggregate sum of  
\$35,000, and certain stocks and bonds as collateral security  
therefor. The bonds were negotiable and the stock had been



10/10/00

1. The Bureau of Census is planning to conduct a study of the economic conditions of the Negro population in the United States. The study is being conducted in cooperation with the National Bureau of Economic Research and the Social Science Research Council. The study is being conducted in order to determine the economic conditions of the Negro population in the United States and to determine the causes of the economic conditions of the Negro population in the United States. The study is being conducted in order to determine the economic conditions of the Negro population in the United States and to determine the causes of the economic conditions of the Negro population in the United States.

6

THESE ARE THE ONLY TWO  
COPIES OF THIS DOCUMENT  
ON FILE AND IN THE  
OFFICE OF THE DIRECTOR  
OF THE FBI

© 2010 Blackwell Publishing Ltd *Journal of Internal Medicine* 267: 105–114

... ..

...and I have to confess that I will not be able to

... ..

• *Journal of the American Medical Association*, 1997; 277: 1001-1005

• 1991 and 1992: 1991 was a year of high unemployment, and 1992 was a year of high unemployment.

All findings are copyright © 2005 by American Psychological Association or one of its allied publishers. This article is intended solely for the personal use of the individual user and is not to be disseminated broadly.

[illegible]

1999, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 2681, 26

Copyright © 2000 by John Wiley & Sons, Inc.

© 1991 by John Wiley & Sons, Inc.

\_\_\_\_\_

[illegible]

100-443887-100

© 2000 Blackwell Science Ltd *Journal of Internal Medicine* 247: 101–107

endorsed by Samuel K. Martin. The notes authorized the trust company to sell, assign and deliver them at public or private sale, without notice and without demand of payment of the notes. Such collateral was listed as such in the inventory filed in New York by the executor there, and as personal property so held in the inventory filed here on April 27, 1920, by the ancillary executors. While said notes were paid by the New York executor June 7, 1920, appellee refused to surrender the collateral but continued to hold it as such co-ancillary executor, continuing to collect the interest on the bonds and dividends on the stock.

Before filing the Cook County inventory said Martin, in correspondence between the co-ancillary executors, took the position that the legal situs of such property was in New York, and made an annotation to that effect after the signatures of the ancillary executors to their inventory. If the annotation was intended to question the court's jurisdiction over the collateral as not assets in this state, it was not followed up, as should have been done, by any action to bring it to the attention of the court. On the contrary, appellant Martin, apparently upon the theory that such collateral constituted assets for administration here, not only recited the same in his petition for letters of ancillary administration as "personal estate" and listed the same in the inventory, but allowed appellee as co-ancillary executor to deal with the same as assets in Illinois - at least after the debt to the latter was paid - until the presentation of the latter's final account and report, thus up to that time standing in the attitude of acquiescing in and consenting to such administration. And it was not until ~~XXXXX~~ ~~XXXXX~~ ~~XXXXX~~ ~~XXXXX~~ ~~XXXXX~~ appellant's objections to the final account were overruled, and the appeal from the ruling was pending that an order was sought and entered on his motion, directing appellee





to turn over the stocks and bonds to appellant as the New York executor.

In Martin's letter of April 8, 1930, written to appellee prior to filing the inventory in Cook County, he states that he had requested their joint attorney to get a ruling on the matter, and that "if the court decides you are right I will, of course, drop the question and sign the inventory." The matter appears to have been submitted to the assistant of the probate judge having charge of questions relating to inventories, and no further steps were taken in the matter except to interpose objections on the hearing of the final account to compensation for appellant's services in the administration. Appellant knew, however, that after the payment of the debt to the Central Trust Company it retained said stock and bonds in its capacity as co-ancillary executor, and as such was collecting the interest and dividends that had accrued thereon. If he did not intend to abide by the approval of the inventory as jointly submitted he should not have waited until the time came for closing the estate before submitting to the court the question whether the situs of the property already administered upon was here or in New York. At that time it had seemingly become an academic question. It did not affect the right of distribution but simply the value of services for administration already had, to which Martin by his silence and acquiescence in not presenting the matter to the proper tribunal in due time, - providing he was not bound by the decision of the judge's assistant - must be held to have given consent, and is thereby precluded from now raising the question of the situs of said property for administration.

While the arguments upon that question present a subject which upon the instant facts is not free from difficulties and upon all phases of which there is not entire harmony of opinion, yet it is unnecessary to go into its merits, if, as



the first of which was made in relation to the law

of the

In the first place, it is to be noted, that the

first of these is the fact that the law is not

in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

law is not in the first place, it is to be noted, that the

we think, said Martin is estopped upon the foregoing facts from objecting at this late day to the allowance of compensation for services already rendered in the administration of the estate with his knowledge and implied acquiescence and consent. It is a familiar doctrine that "where a man has been silent when in conscience he ought to have spoken, he shall be debarred from speaking when conscience requires him to be silent " (2 Pom. Eq. Jur. 3rd Ed., sec. 818,) and without elaborating upon its application, we think under the facts above stated it should control the disposition of this case. Accordingly the order will be affirmed.

AFFIRMED.

Gridley, P. J., and Fitch, J., concur.



...the ... ..  
... ..  
... ..  
... ..  
... ..  
... ..  
... ..  
... ..  
... ..  
... ..

... ..

294 - 28952

ABRAHAM FINKELSTEIN,  
Appellee,

vs.

AUTOIST MUTUAL INSURANCE  
CO. OF CHICAGO, ILLINOIS,  
a corporation,  
Appellant.

3824a  
234 I.A. 627  
APPEAL FROM  
MUNICIPAL COURT  
OF CHICAGO.

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

Plaintiff brought suit on a policy issued by defendant insuring his touring automobile, a Ford make, against theft for its actual value not exceeding \$600. The jury found the issues for plaintiff and assessed his damages at \$617.10 which included interest at 5 per cent on \$561.29, from the time the insurance was payable.

The points made by appellant are that the proof of loss was not filed in apt time, that there was no legal evidence of the damages, and interest was not allowable.

As to proof of loss. The car was stolen March 31, 1931, and so reported to defendant the nextday. About two or three weeks later defendant's assistant manager, Milcher, who took plaintiff's application for the insurance, came to see him, and filled out, or partially filled out, on one of the company's blanks, the proof of loss. He says he left it with plaintiff; plaintiff said he took it with him, saying, "everything would be all right." On this point plaintiff was evidently mistaken for defendant produced a statement of the proof of loss, sworn to by plaintiff on June 17th following, which was received by defendant in the mail and so stamped on June 18th, which was 87 days after the loss. The policy required the proof of loss to be rendered to defendant within 60 days, and the jury made a



22.1.1.637

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

special finding that it was not so rendered. This finding would be inconsistent with the general verdict were it not for the fact that there was also submitted to the jury the question whether defendant had not by its conduct waived the presentation of proof in that time.

Bearing on the question of waiver it appears that plaintiff called up defendant by telephone the latter part of May and talked with its manager Reardon, saying the 60 days had expired and he wanted to know what the company was going to do. Plaintiff testified that Reardon replied that he understood the car had been recovered by the police; that plaintiff informed him that it was a different car, and the manager asked him to come to the office, which he did, when the manager asked for the keys to the car and for the policy, saying, "the best I can do for you is to give you \$400." Reardon did not testify. This conversation was corroborated by another witness. Hilcher testified he never made such offer, but plaintiff did not claim he had.

On June 2, 1931, defendant, through Hilcher, then manager, wrote plaintiff saying it could not honor his claim until it had word from the central police station that the car recovered was other than the car reported stolen. If the jury believed that defendant offered to pay \$400 after the expiration of 60 days, and, as indicated by said letter, stood willing to adjust the claim on satisfactory proof that the insured car had not been recovered, then it apparently stood willing on both occasions to waive the requirement of proof of loss within 60 days. There was evidence, therefore, upon which the jury might have found that defendant waived the requirement.

(Dwelling House Ins. Co. v. Dowdall, 159 Ill. 179; Citizens Ins. Co. v. Stoddard, 197 Ill. 530; Barbour v. Aetna Life Ins.



...the fact that it was not a ...  
...the fact that it was not a ...  
...the fact that it was not a ...

The first of these is the fact that the
 Government has been unable to obtain
 the necessary information from the
 various sources which it has
 been accustomed to rely upon.
 This is due to the fact that
 the Government has been unable
 to obtain the necessary information
 from the various sources which it
 has been accustomed to rely upon.
 This is due to the fact that
 the Government has been unable
 to obtain the necessary information
 from the various sources which it
 has been accustomed to rely upon.

On June 2, 1961, Defendant, Kenneth Williams, was  
arrested, and immediately confined at the Federal House of  
Detention, New York City. He was held in custody until  
June 10, 1961, when he was released on bail. He was  
arrested on a warrant issued by the United States  
District Court for the Southern District of New York,  
dated June 2, 1961, and captioned as follows: "United  
States vs. Kenneth Williams, Defendant." The warrant  
was issued by Judge John J. Lewis, and the return  
was made by the United States Marshal, New York City.  
The warrant was issued on the basis of information  
received from the New York City Police Department,  
which had advised that Defendant Williams was a  
fugitive from justice, and was wanted for trial on  
charges of conspiracy to defraud the United States,  
violation of the Espionage Laws, and other offenses.  
The warrant was issued for the purpose of bringing  
Defendant Williams before the Court for trial on the  
charges against him.

Ca., 224 Ill. App. 312.)

As to proof of damages and the question of interest. Only one witness testified on this subject. He had been an automobile sales manager for seven years, dealing with Ford cars, and was apparently familiar with their market value. The agency of which he was manager sold the car to plaintiff in the previous December. Plaintiff claimed that it was practically new, never having been driven more than three times and not farther than 20 miles. Said witness testified the market value of a new Ford at or about the date of the loss was \$562.30, but that there would be a depreciation in cash market value, from December to date of loss on a car driven 20 miles, of 33-1/3 per cent. There was also proof that the car had met with an accident requiring the fender and running board to be replaced, for which defendant paid \$13 to the man who did the work.

In view of such proof the damages assessed were excessive.

The evidence disclosed sufficient doubt as to the identity of the car recovered by the police to warrant defending the action, so that in our opinion the jury was not warranted in including interest on the value of the car for vexatious delay. According to the testimony of plaintiff's own witness, the only one who testified as to damages, the jury should have computed them at two-thirds of \$562.30, namely, at \$374.93, and as interest was not properly allowable, the judgment will be affirmed for that amount if a remittitur is made within ten days to that sum, otherwise the judgment will be reversed and the cause remanded for a new trial.

This being a fourth class case where technical pleadings are not required appellant's claim that waiver was not pleaded need not be considered. Nor need we discuss either





the authority of the manager or assistant manager to bind the company with respect to such waiver. The point was not raised below, and in the absence of counter proof such authority is inferable from the evidence.

There was no error in the court's refusal to submit to the jury, at defendant's request, special findings, whether defendant extended the time for filing proofs of loss, and when, if at all, plaintiff rendered defendant a statement thereof. Any finding in response thereto would not have been inconsistent with the general verdict rendered which, in view of the special finding, must have rested on the theory of said waiver.

AFFIRMED IN CASE OF A REMITTITUR,  
OTHERWISE REVERSED AND THE CAUSE  
REMANDED.

Gridley, P. J., and Fitch, J., concur.



[illegible]

\* numbers are in parentheses

319 - 28977

ALVIN E. NELSON et al., etc.,  
Appellants,

vs.

H. PAULMAN & COMPANY,  
Appellees.

234 I.A. 627  
APPEAL FROM SUPERIOR COURT,  
COOK COUNTY.

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

This case, like that of Harlich v. Chapple, 311 Ill. 479, presents the question of priority as between an artisan's lien upon an automobile for repairs and the lien of a previously recorded chattel mortgage on the same.

In both cases the mortgagee replevined the automobile from a garage keeper who made the repairs, and the lower court gave priority to the latter's lien. In the Harlich case, supra, the Supreme Court held the mortgagee's lien did not yield to a subsequent lien for repairs either from the necessity of making them or from any implication of authority from the mortgagee to make them.

While section 4 of the act providing for an artisan's lien on chattels for labor, etc., (Session Laws 1921, p. 308, Cahill's Stat., Ch. 82, Par. 45) expressly provides that such lien shall be subject to the lien of any bona fide chattel mortgage upon the same chattel recorded prior to the commencement of such lien, it was contended in the Harlich case that a provision in the mortgage that the mortgagor should keep the property in first class condition at all times at his own expense gave the mortgagor implied authority to cause a prior lien to be put upon the chattel for necessary repairs. But the court held



YSSO .A. I 435

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

THE NEW YORK PUBLIC LIBRARY

ASTOR LENOX TILDEN FOUNDATION

THE NEW YORK PUBLIC LIBRARY

that neither from the relationship between the mortgagor and the mortgagee, nor the language of the instrument was there authority to the mortgagor to create any liability on behalf of the mortgagee.

The same contention is made by appellee in this case based upon a provision in the mortgage that the mortgagor will pay cash in advance for garage charges, repairs, etc., so that no lien or claim of lien may attach to said property. The holding in the Whrlich case that the language in the mortgage in that case did not authorize the mortgagor to create any liability in behalf of the mortgagee is equally applicable to the language in the mortgage in the case at bar.

There is no material difference of fact between the two cases, unless it be that in the Whrlich case the mortgagee did not know of the repairs by the artisan until the latter announced he would hold the automobile for the repair bill, while in the case at bar it appears that knowledge of the fact that the automobile was in appellee's possession for repairs came to appellants' notice about a week before they demanded possession and replevied the property.

It is urged by appellee that such delay to obtain possession of the property after obtaining such knowledge estops the mortgagees from asserting the priority of their lien. But we find nothing in the evidence that furnishes a basis for the doctrine of estoppel. The property was mortgaged to plaintiff to secure notes aggregating \$1412 of which only one had fallen due. The amount of the lien claimed by defendant is \$903.83 for materials and labor furnished between August 18, 1922, and September 22, 1922. There is nothing in



[illegible]

The same condition is also to be applied in this case and when a provision in the mortgage is found to be in violation of the law, the court shall have the authority to set aside the mortgage and to grant a new one, or to grant a decree of foreclosure, or to grant a decree of redemption, or to grant a decree of sale, or to grant a decree of any other relief which may be just and equitable in the premises.

There is no material difference in the nature of the work, except in the fact that the building was the main part of the structure of the building and the main part of the building was the main part of the building.

[illegible]

the record from which it can be definitely stated how much of the amount of expenditure in labor and material was made after plaintiffs knew the automobile was in defendant's possession, nor is there anything in the record to show the value of the automobile, and whether without such repairs it was not adequate security for the amount of the mortgage. There is nothing in the evidence, therefore, from which it can be said that plaintiffs received any benefit by such delay or that they did anything to induce defendant to complete the repairs after they acquired knowledge of them. There is, therefore, nothing in the record upon which to predicate the doctrine of estoppel. The garage keeper was bound to take notice of the lien of the chattel mortgage to which the statute makes his lien subject, and the record shows no communication between plaintiffs and defendant in this case until demand upon the latter for possession was made, or any act of theirs upon which defendant placed reliance. The elements of estoppel are lacking, and we find nothing in the facts of this case to differentiate it from Marlich v. Chapple, supra, in the application of the law laid down in the latter. The case was tried without a jury.

Accordingly the judgment of the lower court will be reversed with a finding of fact that the right of possession to the property was in appellants who, as the record shows, still held possession under the writ.

REVERSED WITH A FINDING OF FACT.

Gridley, P. J., and Fitch, J., concur.



THE COURT OF APPEALS IN THE DISTRICT OF COLUMBIA, in the case of the People of the District of Columbia vs. John Edgar Hoover, has affirmed the judgment of the District Court of the District of Columbia, in the case of the People of the District of Columbia vs. John Edgar Hoover, which was rendered by the District Court of the District of Columbia, in the case of the People of the District of Columbia vs. John Edgar Hoover, on the 10th day of December, 1935.

1. The first group of people who are interested in the results of the study are the researchers themselves. They want to know if the study was successful in achieving its objectives and if the results are consistent with their expectations.

319 - 28977

**FINDING OF FACT.**

We find appellants have the right to the possession of the property in question, and that their lien is superior to that of defendant.



# THE

THE

3827a

HOPE THOMPSON,

vs.

GEORGE W. HUNTER et al.

On Appeal of EDWARD G. BERGLUND,  
Appellant,

vs.

WILLIAM A. ROBINSON, as Receiver,  
Appellee.

234 I.A. 627

APPEAL FROM SUPERIOR COURT  
OF COOK COUNTY.

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

Appellant seeks a reversal of an order disallowing his claim for legal services rendered to a receiver and his successor appointed under a bill for foreclosure of a mortgage trust deed filed by Hope Thompson against George W. Hunter et al.

William A. Robinson, the appellee, was appointed receiver of the property to succeed one Smith who had resigned as receiver thereof. Each was given leave by order of court to employ appellant Berglund as his counsel in the receivership matters. The record discloses that Berglund also acted as solicitor for complainant, for which he received compensation, and that there were occasions during the litigation when the interests of complainant and the interests of the receiver were adverse to one another. It is for that reason the chancellor disallowed complainant's claim.

On June 1, 1923, the receiver filed his final report and account, to which complainant filed objections, which, in view of a stipulation subsequently made between them as to the amount of the receiver's fees, were not urged. On the same day appellant filed his petition reciting the services he had rendered both receivers and making claim against appellee, as receiver, for



Page 1

THE COURT

VS.

JOHN W. SMITH, JR.

Plaintiff

VS.

JAMES A. SMITH, JR.

2347.63

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

...

\$2500 as reasonable solicitor's fees for such services. No formal written objection was made thereto, but on a hearing in open court the chancellor asked defendant Hunter, against whom the decree of foreclosure was entered, if he objected, and he said he did. At the hearing appellee produced documentary evidence showing that appellant Berglund was acting as solicitor for complainant after he was appointed solicitor for the receiver, and that he so acted when their interests were in conflict. Supplementing the evidence so heard the chancellor has certified as an exhibit the master's report disclosing that Berglund had taken an active part in the litigation in behalf of complainant. This exhibit was certified upon the theory that disclosing, as it does, such services the chancellor took judicial notice thereof in determining the propriety of disallowing appellant's petition.

On July 8, 1923, the day of the hearing, the petition was disallowed and an order <sup>entered</sup> fixing the amount of the receiver's fees. On July 10 an order was entered discharging the receiver. On July 20 Berglund was allowed an appeal from the order disallowing his claim against Robinson as such receiver, which he has perfected.

Appellee urges that as he made no objection to appellant's petition for compensation, and was discharged before appellant was allowed an appeal, he is not rightfully made party appellee, and that the appeal should be dismissed. It may be doubtful whether appellant, not being a party to the case or interested in the subject matter of the final decree, can appeal. (Steger v. Steger, 165 Ill. 579; Anderson v. Steger, 173 Ill., 112.)

But in view of the fact that the order disallowing appellant's claim should in any event be affirmed upon its merits and the result would be the same if the appeal were dismissed, we need not consider these questions of procedure.



[illegible]

On July 20, 1964, the following information was received from the Bureau of the Census, Washington, D.C.:

[illegible]

The record clearly discloses that appellant was acting in a dual capacity for parties whose interests were at times antagonistic.

On November 4, 1921, complainant made sworn proof of service of a notice of motion by complainant, which he signed as his solicitor, to approve the master's report, stating in his affidavit that he was the duly authorized agent and solicitor of complainant. On January 25, 1922, he addressed a letter to appellee in which he said he represented the complainant. And acting in his behalf he wrote to the receiver on February 29, 1922, expressing disapproval of payments made by the receiver for repairs, etc., and saying that the complainant wished him to make no payments over \$75 thereafter except by order of court approving the same. A similar letter from the complainant to the receiver was written September 14 following, asking that before purchasing coal or incurring further obligations the receiver consult appellant Berglund. These letters disclosed hostile relations between complainant and the receiver. The master's report also disclosed other services rendered by Berglund to complainant in the capacity of the latter's solicitor. It is unnecessary to detail them. As said in Farwell v. Great Western Tel. Co., 161 Ill., 522:

"It is a rule of a salutary character that a receiver can not be permitted to employ as his counsel one who is engaged by another party to the proceeding, and whenever the relations of such counsel are hostile to another party to the proceeding wherein the receiver must act, it cannot be tolerated that the receiver may employ such hostile counsel."

The court then cites High on Receivers (sec. 216), and Edwards on Receivers (p. 93), and other authorities sustaining this wholesome principle, which is applicable to the facts of this case. Other authorities on the subject are cited in Haffron v. Flower et al., 36 Ill. App. 200. The same principle is recognized in Adams v. Woods, 8 Cal. 306; Speiser v. Merchants Exchange Bank, 110 Wis. 506, 517; Merchants & National Bank of Detroit v. Kent, 43 Mich. 292.



THE UNIVERSITY OF CHICAGO PRESS

• *Journal of Management Education* 32(10):1039-1050

[illegible]

1998, 2000, 2002, 2004, 2006, 2008, 2010, 2012, 2014, 2016, 2018, 2020, 2022, 2024, 2026, 2028, 2030, 2032, 2034, 2036, 2038, 2040, 2042, 2044, 2046, 2048, 2050, 2052, 2054, 2056, 2058, 2060, 2062, 2064, 2066, 2068, 2070, 2072, 2074, 2076, 2078, 2080, 2082, 2084, 2086, 2088, 2090, 2092, 2094, 2096, 2098, 2100, 2102, 2104, 2106, 2108, 2110, 2112, 2114, 2116, 2118, 2120, 2122, 2124, 2126, 2128, 2130, 2132, 2134, 2136, 2138, 2140, 2142, 2144, 2146, 2148, 2150, 2152, 2154, 2156, 2158, 2160, 2162, 2164, 2166, 2168, 2170, 2172, 2174, 2176, 2178, 2180, 2182, 2184, 2186, 2188, 2190, 2192, 2194, 2196, 2198, 2200, 2202, 2204, 2206, 2208, 2210, 2212, 2214, 2216, 2218, 2220, 2222, 2224, 2226, 2228, 2230, 2232, 2234, 2236, 2238, 2240, 2242, 2244, 2246, 2248, 2250, 2252, 2254, 2256, 2258, 2260, 2262, 2264, 2266, 2268, 2270, 2272, 2274, 2276, 2278, 2280, 2282, 2284, 2286, 2288, 2290, 2292, 2294, 2296, 2298, 2300, 2302, 2304, 2306, 2308, 2310, 2312, 2314, 2316, 2318, 2320, 2322, 2324, 2326, 2328, 2330, 2332, 2334, 2336, 2338, 2340, 2342, 2344, 2346, 2348, 2350, 2352, 2354, 2356, 2358, 2360, 2362, 2364, 2366, 2368, 2370, 2372, 2374, 2376, 2378, 2380, 2382, 2384, 2386, 2388, 2390, 2392, 2394, 2396, 2398, 2400, 2402, 2404, 2406, 2408, 2410, 2412, 2414, 2416, 2418, 2420, 2422, 2424, 2426, 2428, 2430, 2432, 2434, 2436, 2438, 2440, 2442, 2444, 2446, 2448, 2450, 2452, 2454, 2456, 2458, 2460, 2462, 2464, 2466, 2468, 2470, 2472, 2474, 2476, 2478, 2480, 2482, 2484, 2486, 2488, 2490, 2492, 2494, 2496, 2498, 2500, 2502, 2504, 2506, 2508, 2510, 2512, 2514, 2516, 2518, 2520, 2522, 2524, 2526, 2528, 2530, 2532, 2534, 2536, 2538, 2540, 2542, 2544, 2546, 2548, 2550, 2552, 2554, 2556, 2558, 2560, 2562, 2564, 2566, 2568, 2570, 2572, 2574, 2576, 2578, 2580, 2582, 2584, 2586, 2588, 2590, 2592, 2594, 2596, 2598, 2600, 2602, 2604, 2606, 2608, 2610, 2612, 2614, 2616, 2618, 2620, 2622, 2624, 2626, 2628, 2630, 2632, 2634, 2636, 2638, 2640, 2642, 2644, 2646, 2648, 2650, 2652, 2654, 2656, 2658, 2660, 2662, 2664, 2666, 2668, 2670, 2672, 2674, 2676, 2678, 2680, 2682, 2684, 2686, 2688, 2690, 2692, 2694, 2696, 2698, 2700, 2702, 2704, 2706, 2708, 2710, 2712, 2714, 2716, 2718, 2720, 2722, 2724, 2726, 2728, 2730, 2732, 2734, 2736, 2738, 2740, 2742, 2744, 2746, 2748, 2750, 2752, 2754, 2756, 2758, 2760, 2762, 2764, 2766, 2768, 2770, 2772, 2774, 2776, 2778, 2780, 2782, 2784, 2786, 2788, 2790, 2792, 2794, 2796, 2798, 2800, 2802, 2804, 2806, 2808, 2810, 2812, 2814, 2816, 2818, 2820, 2822, 2824, 2826, 2828, 2830, 2832, 2834, 2836, 2838, 2840, 2842, 2844, 2846, 2848, 2850, 2852, 2854, 2856, 2858, 2860, 2862, 2864, 2866, 2868, 2870, 2872, 2874, 2876, 2878, 2880, 2882, 2884, 2886, 2888, 2890, 2892, 2894, 2896, 2898, 2900, 2902, 2904, 2906, 2908, 2910, 2912, 2914, 2916, 2918, 2920, 2922, 2924, 2926, 2928, 2930, 2932, 2934, 2936, 2938, 2940, 2942, 2944, 2946, 2948, 2950, 2952, 2954, 2956, 2958, 2960, 2962, 2964, 2966, 2968, 2970, 2972, 2974, 2976, 2978, 2980, 2982, 2984, 2986, 2988, 2990, 2992, 2994, 2996, 2998, 3000, 3002, 3004, 3006, 3008, 3010, 3012, 3014, 3016, 3018, 3020, 3022, 3024, 3026, 3028, 3030, 3032, 3034, 3036, 3038, 3040, 3042, 3044, 3046, 3048, 3050, 3052, 3054, 3056, 3058, 3060, 3062, 3064, 3066, 3068, 3070, 3072, 3074, 3076, 3078, 3080, 3082, 3084, 3086, 3088, 3090, 3092, 3094, 3096, 3098, 3100, 3102, 3104, 3106, 3108, 3110, 3112, 3114, 3116, 3118, 3120, 3122, 3124, 3126, 3128, 3130, 3132, 3134, 3136, 3138, 3140, 3142, 3144, 3146, 3148, 3150, 3152, 3154, 3156, 3158, 3160, 3162, 3164, 3166, 3168, 3170, 3172, 3174, 3176, 3178, 3180, 3182, 3184, 3186, 3188, 3190, 3192, 3194, 3196, 3198, 3200, 3202, 3204, 3206, 3208, 3210, 3212, 3214, 3216, 3218, 3220, 3222, 3224, 3226, 3228, 3230, 3232, 3234, 3236, 3238, 3240, 3242, 3244, 3246, 3248, 3250, 3252, 3254, 3256, 3258, 3260, 3262, 3264, 3266, 3268, 3270, 3272, 3274, 3276, 3278, 3280, 3282, 3284, 3286, 3288, 3290, 3292, 3294, 3296, 3298, 3300, 3302, 3304, 3306, 3308, 3310, 3312, 3314, 3316, 3318, 3320, 3322, 3324, 3326, 3328, 3330, 3332, 3334, 3336, 3338, 3340, 3342, 3344, 3346, 3348, 3350, 3352, 3354, 3356, 3358, 3360, 33

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the People of the East (CLPE) in the United States. The Commission is therefore unable to provide any information on this subject.

the Court then asked him to explain the difference between the two. He said that the first was a "simple" case, and the second was a "complex" case. He then asked the Court to decide which case was the "simple" case and which was the "complex" case. The Court then asked him to explain the difference between the two. He said that the first was a "simple" case, and the second was a "complex" case. He then asked the Court to decide which case was the "simple" case and which was the "complex" case.

In view of conflicting interests and hostile relations between the complainant and the receiver disclosed by the record, we think there was no abuse of discretion by the chancellor in disallowing appellant's claim. Accordingly the order of disallowance will be affirmed regardless of whether or not we might appropriately dismiss the appeal for want of proper parties.

AFFIRMED.

Gridley, P. J., and Fitch, J., concur.





3828a

GENERAL INSULATE COMPANY,  
a Corporation,  
Appellee,  
  
vs.  
  
JOSEPH WEIDENHOFF,  
Appellant.

APPEAL FROM MUNICIPAL COURT  
OF CHICAGO.

234 I.A. 627

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

The judgment appealed from was for damages for breach of contract. In the year 1930 defendant Weidenhoff gave to plaintiff, General Insulate Company, five orders for electrical parts to be moulded for defendant, two orders in May, one in September and two in October, each calling for a different number of parts. These orders were written on a regular printed form of defendant's. Underneath the blank for designation of goods ordered were the printed words "Shipping directions." Following these words in the last two orders was written, "Specifications as to mould production will be sent you later, as required." Noted on the side of each of these last two orders were the words "It is understood that if there is any reduction in price, same is to apply on this order." The main issue hangs principally upon construction of the former clause.

The first three orders called for 35000 pieces, and the last two for 41000 pieces. The moulding material used in the manufacture of these articles was furnished by plaintiff, and certain metal inserts, in different shapes and sizes, were furnished by defendant. Of the manufactured goods defendant took about 25,000 pieces called for by the first three orders, and of the other orders only 30 pieces of one of them. To complete the unfilled balance defendant should have shipped to plaintiff approximately 350,000 inserts, of which he had sent only about 25,000.

Plaintiff operated as long as defendant shipped the inserts and stopped operating on receipt of a letter from defendant,





dated November 27, 1920, in which defendant said: "Collections are very slow and our customers \* \* \* have asked that we withhold further shipments \* \* \* our stock is not moving very rapidly \* \* \* so we ask that you do not ship us any more merchandise until we advise you to that effect." This order was never countermanded and no advice to the contrary was given. On March 16, 1921, defendant wrote plaintiff that instead of business getting better it appeared to be worse; that a shipment on December 31 was against defendant's instructions, and he could not tell when he would be able to dispose of the goods. Plaintiff made demand on defendant for shipping instructions without avail, and its factory manager testified that to his inquiry of defendant over the telephone on July 4, 1921, as to what he proposed to do about allowing plaintiff to complete the unfilled contract, he replied, "Nothing;" that he then said to defendant that plaintiff must know definitely when it can ship the balance of the goods, that it has on hand a very considerable investment in raw materials, and defendant replied: "I will take them when I get good and ready; \* \* \* I propose to do as I please, and if you want to force any legal action, you can go as far as you like." While defendant denied having such conversation, it was one of the questions of fact for the jury.

On August 11, 1921, plaintiff wrote defendant, referring to the unfilled contracts of the previous year and the failure to receive shipping instructions during the current year, and asked defendant how he wished to settle the unfilled contracts totaling close to \$19,000, or for instructions to ship "\$5,000 plus raw materials we are holding for your account," stating also that plaintiff held certain pieces subject to defendant's call. It does not appear that these letters were answered, or that defendant took any further steps towards performance, and plaintiff instituted the present suit on October 31, 1921, to recover damages for defendant's breach of contract.

The theory of the action is that by the letter of



[illegible]

November 27, 1920, defendant refused to go on with the contracts, and that the contracts being silent or indefinite in respect to time of delivery the law implies and presumes a reasonable time therefor, and that more than a reasonable time has elapsed. If this theory is correct then there was sufficient evidence of defendant's breach of contract to support the verdict.

The defense is based mainly on defendant's construction of the two clauses referred to contained in the last two contracts, it being defendant's theory that the contracts were indefinite as to time of delivery, that the words "as required" in the clause pertaining to specifications, etc., permitted defendant to take the goods "as he needed them," and that, therefore, he could not be held to have breached his contracts unless it be shown that he required or needed the goods in his business. He further contends that if the language is ambiguous then the court erred in not receiving oral evidence to explain the ambiguity.

But we do not think there was any ambiguity, and we agree with the contention of appellee that the word "required" grammatically refers to the word "specifications" and the latter word relates to "mould production." Appellee pertinently argues that the clause does not say "specifications as to the time of shipping will be sent," but "specifications as to mould production will be sent you as required," meaning as required by the plaintiff, defendant not needing specifications as to mould production. This construction is supported by testimony of defendant to the effect that the "distributor caps" were made from defendant's dies with interchangeable moulds "so as to balance the production defendant needed, as he might sell more of one kind one month than another and would order the different kinds he needed," and that "the dies were made interchangeable in such a way that on distributor caps he could run three of a kind or two of a kind and a third of a different kind or with three different impressions at one time."



[illegible]

Hence, as appellee plausibly argues, without specifications of the kind wanted plaintiff might proceed to mould in unsatisfactory proportions.

This interpretation of the clause leaves the time for delivery indefinite and in that case the law would presume a reasonable time therefor. (Driver v. Ford, 90 Ill., 595, 598; Hamilton v. Scully, 118 Id. 192, 198; Dunn v. Mayo Mills, 134 Fed. 804; Cameron Coal & Mercantile Co. v. Universal Metal Co., 110 Pac. 720 (Okla.), 31 L. R. A. 2. 618, and note p. 619.) To construe the contract otherwise would impose an obligation on plaintiff to manufacture the definite quantities called for by the orders, but relieve defendant from taking them unless he "needed them," thus rendering the contract lacking in mutuality. Where the terms of a contract are susceptible of two significations, that will be adopted which renders the contract operative, and which renders the obligations imposed mutually binding unless wholly negatived by the language used. (Minnesota Lumber Co. v. Whitebreast Coal Co., 160 Ill., 85.) But the construction contended for by appellant, that deliveries were to be made when or as needed by him, still leaves the time for delivery or deliveries uncertain and indefinite, thus calling for the legal presumption of a reasonable time therefor, and what is a reasonable time must depend upon the circumstances of the case and be determined by the jury.

Appellant offered to prove certain conversations to the effect that deliveries were to be as he needed them, and that the insertion of the clause referred to was the result thereof. But it is clear that if the contract was not ambiguous such testimony was inadmissible, and the construction of law which presumes a reasonable time for delivery cannot be varied or contradicted by a previous or contemporaneous oral agreement or understanding between the parties. (See note 331 L.R.A. 619.)





The court properly rejected proof of such conversations and properly exercised its prerogative in instructing the jury upon its construction of the contract, which was in accordance with plaintiff's theory, and we find no error in such instructions.

We do not find that the record justifies appellant's complaint that the court excluded evidence tendered by him relating to the question of what constituted reasonable time. What it did exclude, and properly, was defendant's opinion as to what would have been a reasonable time for him to have ordered and received the undelivered parts, as it was merely a conclusion of the witness as to an ultimate fact in issue to be determined by the jury. (Armstrong Paint & Vernish Works v. Continental Can Company, 308 Ill., 242.)

All the orders being silent or indefinite as to the time of delivery much latitude was given to both parties in introducing evidence bearing on what constituted a reasonable time, and there is little if any, ground for complaint as to the rulings upon that phase of the case.

Evidence was received on behalf of plaintiff as to the necessity of operating by "continuous runs" and basing prices thereon, and a letter on that subject from plaintiff to defendant written some time prior to the receipt of said orders was received in evidence, to which defendant objected. So far as such testimony had a bearing on the question of a reasonable time for performance it was admissible, but if received on the theory of an established custom it was objectionable. The testimony tended to show surrounding conditions under which the articles were manufactured and in that respect bore upon the question of a reasonable time for delivery and was relevant, and as the contracts provided for specific prices we fail to see any prejudicial application that could be made of the testimony.

The damages sought were for loss of profits, and a



[illegible]

decline in the market price of "redmanol," a material which plaintiff purchased for the purpose of carrying out the contracts. There was evidence that it had deteriorated over 75 per cent at the time the suit was brought. The amount claimed for such loss was over \$2000, and the loss of profits claimed was \$3500. The verdict was for \$2000. Appellant claims it was a compromise verdict, but the losses were such as could only be approximated, and all the law requires when the loss or damage cannot be given with absolute certainty is that it be approximated. (Barnett v. Caldwell Furniture Co., 277 Ill. 286.) Possibly the jury took defendant's position that as plaintiff also used redmanol in carrying out contracts for others no allowance should be made for its deterioration, and allowed merely for loss of profits. Possibly, too, the jury may have taken into consideration that defendant was entitled to a reduction of price as acted on the last two contracts. However that may be, we do not think it is a case of a compromise verdict, and defendant is in no position to complain that it is less than the amount claimed by plaintiff.

We think there is no ground for reversible error either in the construction given to the contract by the court or the instructions in accordance therewith, or as to the rulings on evidence admitted or excluded. Accordingly the judgment will be affirmed.

AFFIRMED.

Gridley, P. J., and Fitch, J., concur.





JOHN P. STIFT,  
Appellee,  
vs.  
CITY OF CHICAGO et al.,  
Appellants.

3829a  
APPEAL FROM SUPERIOR COURT  
OF COOK COUNTY.

234 I.A. 628

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

Appellee filed a petition, which was subsequently amended, against appellants for a writ of mandamus commanding them to cause requisitions to be made for ten captains of the fire department of the City of Chicago, to certify and appoint petitioner to the office or position of captain of said department, and to cause him to be promoted or appointed to such office, or in the alternative if it should appear that requisition and certification had been made on or prior to February 27, 1922, that respondents cause the salary of \$2700 per annum to be paid in monthly installments, beginning with March 1, 1922.

The case was tried before the court upon the issues formed and a stipulation of facts, supplemented by oral testimony, and the writ was awarded as prayed.

In an identical proceeding by Wm. E. Firnhaber against the same defendants in case No. 26608, predicated upon the same state of facts and tried upon the same evidence, the only difference being in the persons of the plaintiffs, we filed an opinion on November 27, 1923, reversing the order of the lower court awarding the writ, with a finding of facts to the effect that the requisition referred to in the pleadings was withdrawn before the civil service commission had acted thereon. An application for a writ of certiorari in that case was denied by the Supreme Court. For the





reasons stated in said opinion, to which reference is made, the order awarding the writ of mandamus must be reversed with a like finding of the facts.

REVERSED WITH A FINDING OF FACTS.

Gridley, P. J., and Fitch, J., concur.



...the ... of the ...  
...the ... of the ...  
...the ... of the ...

...the ... of the ...

...the ... of the ...

FINDING OF FACTS.

We find that the requisition issued by the fire marshal of the City of Chicago February 27, 1922, referred to in the pleadings, was withdrawn by his authority on February 28, the day after it was delivered to the civil service commission, and was so withdrawn before said commission had acted thereon, pursuant to a discretionary power so to do vested in said fire marshal by an ordinance of the City of Chicago.





3830a

JOHN MAJERUS,  
Appellant,  
  
vs.  
  
MARGARET BREIDENHOFF and  
IDA FISHER,  
Appellees.

234 I.A. 628  
APPEAL FROM MUNICIPAL COURT  
OF CHICAGO.

MR. JUSTICE BARABE DELIVERED THE OPINION OF THE COURT.

This is an appeal from a judgment for one cent damages based upon a no exeat republica bond of \$400. It is urged that the finding of the court is against the weight of the evidence.

This is the only error relied upon. But as the bill of exceptions was not signed by the trial judge and was signed by another judge on the theory of his right so to do because of the absence of the trial judge, the bill of exceptions is not a proper part of the record and must be stricken therefrom. (People v. Rosenwald, 266 Ill. 548.) Accordingly it will be stricken and the decree will be affirmed.

AFFIRMED.

Gridley, P. J., and Fitch, J., concur.



3841 A. 688

THE UNIVERSITY OF CHICAGO  
LIBRARY

FOR REFERENCE  
ONLY  
NOT TO BE  
REPRODUCED  
OR  
CIRCULATED  
WITHOUT  
PERMISSION

THE UNIVERSITY OF CHICAGO LIBRARY

This is the only copy of the book in the library.  
The book is the only copy of the book in the library.  
The book is the only copy of the book in the library.  
The book is the only copy of the book in the library.  
The book is the only copy of the book in the library.  
The book is the only copy of the book in the library.  
The book is the only copy of the book in the library.  
The book is the only copy of the book in the library.  
The book is the only copy of the book in the library.  
The book is the only copy of the book in the library.

100 - 10

100 - 10

C. C. SMITH,  
Appellee,

vs.

A. M. BUKER et al.,  
On appeal of NORMAN LITCHFIELD,  
Appellant.

383/a

234 I.A. 628  
APPEAL FROM  
MUNICIPAL COURT  
OF CHICAGO.

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

This is an appeal from a judgment for \$700 and costs in plaintiff's favor in a fourth class action of the Municipal Court. Plaintiff alleged in his statement of claim that he sold and delivered to defendants a motor truck, for which they had agreed, and afterwards refused, to pay the purchase price of \$700. After a default had been entered against defendant Buker the case was tried without a jury on issues formed by the affidavit of Litchfield denying that he ever purchased, or agreed to purchase, the truck, or that he was jointly liable with Buker therefor.

Most of the points urged for reversal relate to the sufficiency of the evidence, but we think it was sufficient to show a joint agreement by defendants to purchase the truck at said price.

It appears from the evidence that both defendants inspected the truck and had a conversation with plaintiff respecting its price, which plaintiff and Buker said was agreed upon. While plaintiff was absent from his place of business the truck was delivered to and subsequently taken by defendants or one of them, upon an understanding with the other, to a shop to be remodeled. Litchfield paid for the



852.1.485

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

1948

work, and afterwards used the truck several weeks in his business.

While the proof is not clear as to the exact relation between the two defendants, <sup>now</sup> yet we think the evidence shows that they intended to become and were jointly liable for the purchase price regardless of any understanding between them as to a community interest in the truck.

It is also urged that the statement of claim does not state a cause of action. Its sufficiency was not questioned below and as it sufficiently informed defendants of the nature of the claim, which the joining of issues and the character of the defense indicate was well understood, we need not in a fourth class case consider the omission of technical averments that would be deemed essential to state a legal cause of action in another class of cases. But the statement of claim at best is merely defective and was cured by verdict.

While we think the so-called variance alleged to exist was not material, yet the point was not raised in the court below and, therefore, cannot be urged here for the first time.

The point that Baker could not be called as a witness under section 33 of the Municipal Court Act because after default taken against him he was no longer an adverse party, we do not deem well taken. He still stood as a defendant as to whom judgment was asked and taken. Besides, he was <sup>called</sup> later in the trial by defendant and examined upon the same subject matters. We fail to find any good ground for a reversal of the judgment. Accordingly it will be affirmed.

AFFIRMED.

Gridley, P. J., and Fitch, J., concur.



and, and otherwise from the above named party in the  
relation.

WHEREAS the party is not a party to the above  
relation between the two companies, and it is the intention  
of the party that they intend to remain and not to be  
in any way connected with the above named party in the  
relation.

It is also stated that the relation of the party  
to the above named party is not a party to the above  
relation and it is the intention of the party that they  
intend to remain and not to be in any way connected  
with the above named party in the relation. It is also  
stated that the party is not a party to the above  
relation and it is the intention of the party that they  
intend to remain and not to be in any way connected  
with the above named party in the relation.

It is also stated that the party is not a party to the above  
relation and it is the intention of the party that they  
intend to remain and not to be in any way connected  
with the above named party in the relation.

It is also stated that the party is not a party to the above  
relation and it is the intention of the party that they  
intend to remain and not to be in any way connected  
with the above named party in the relation.

It is also stated that the party is not a party to the above  
relation and it is the intention of the party that they  
intend to remain and not to be in any way connected  
with the above named party in the relation.

389 - 29047

GEORGE H. CARR,  
Appellee,

vs.

GRAND TRUNK WESTERN RY.  
COMPANY, a corporation,  
Appellant.

383 22  
234 I.A. 628

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

Plaintiff brought suit against defendant to recover damages for injury to his automobile which was struck by a freight train at the intersection of the railroad and Vincennes road, a country highway which ran north and south and was crossed diagonally from northwest to southeast by the railroad track. Plaintiff was going north on the highway about 11:30 p. m., on a dark, rainy night.

He testified that as he was crossing the tracks the left front wheel of his car dropped over the edge of the plank crossing and caused him to lose control of the car and head it up the railroad track to the northwest. He had a spotlight and two headlights on the front of his car, and why they did not enable him to see where he came onto the crossing is not apparent unless the weather prevented. After he and his companion worked for about five minutes to move the car a freight train came from the northwest at about ten miles an hour, and struck its left fender causing it to be thrown towards the other track.

The planks at the crossing were 16 feet long and laid longitudinally with the railroad track and, therefore, diagonally across the highway, thus giving a "saw-tooth" appearance at their ends. But though somewhat rough and



838 J. 1. 1. 02

THE  
OFFICE OF THE  
SECRETARY OF THE  
NAVY

WASHINGTON, D. C.

1898

TO THE SECRETARY OF THE NAVY  
FROM THE SECRETARY OF THE NAVY

THE SECRETARY OF THE NAVY  
HAS THE HONOR TO ACKNOWLEDGE THE RECEIPT OF THE  
LETTER OF THE SECRETARY OF THE NAVY  
DATED THE 1ST INSTANT  
AND TO INFORM THAT THE  
SAME HAS BEEN FORWARDED TO THE  
APPROPRIATE OFFICERS FOR THEIR  
CONSIDERATION  
AND THAT THE  
SAME WILL BE  
REPLIED TO AS SOON AS  
PRACTICABLE  
THE SECRETARY OF THE NAVY  
HAS THE HONOR TO ACKNOWLEDGE THE RECEIPT OF THE  
LETTER OF THE SECRETARY OF THE NAVY  
DATED THE 1ST INSTANT  
AND TO INFORM THAT THE  
SAME HAS BEEN FORWARDED TO THE  
APPROPRIATE OFFICERS FOR THEIR  
CONSIDERATION  
AND THAT THE  
SAME WILL BE  
REPLIED TO AS SOON AS  
PRACTICABLE

uneven the crossing was apparently wide enough for ordinary traffic on a country road, and we find nothing in the condition or structure of the crossing to which the accident could reasonably be attributed. That plaintiff's car dropped off one side of it is easily reconcilable with the fact that it was a dark, rainy night and he came onto the crossing from an up-grade before the lights were cast upon it.

But there was evidence by three persons to the effect that he afterwards said in their presence that he turned north-west on the railroad right of way thinking it was the highway. Plaintiff did not deny making the statement but simply said he had no recollection of it. Nor was it denied by his companion at the time of the accident, who was his witness and alleged to have been present at the time plaintiff made such admission. Plaintiff also admitted he had been drinking.

The locomotive engineer and brakeman testified that when they first saw the three lights on the automobile they took them to be the classification lights and headlight of a locomotive, but on getting a little closer saw they were not and the engineer then set the brakes and shut the engine off. The engineer gave the usual signal whistle at the whistle post about 800 feet from the crossing and the engine's bell was ringing automatically. He seems to have done all that could reasonably be expected under the circumstances, and there appears to have been no negligence on the part of defendant unless it was in his failure to perceive the automobile in time to avert the accident. That the engineer could or should have done so under the circumstances is not in our judgment established by a preponderance of the evidence. Regardless, therefore, of whether it may be said that plaintiff exercised reasonable care or not with a pure accident,



...the ... ..  
... ..  
... ..  
... ..  
... ..  
... ..  
... ..  
... ..  
... ..  
... ..

THE STATE OF NEW YORK  
IN SENATE  
JANUARY 10, 1906.  
REPORT  
OF THE  
COMMISSIONER OF THE LAND OFFICE  
IN RESPONSE TO A RESOLUTION  
PASSED BY THE SENATE  
MAY 1, 1905.  
ALBANY: J. B. LIPPINCOTT & CO., PRINTERS.  
1906.

THE JOURNAL OF THE AMERICAN MEDICAL ASSOCIATION  
PUBLISHED WEEKLY  
535 N. Dearborn Ave., Chicago 10, Ill.  
Subscription Price: \$5.00 per Annum in Advance  
Single Copies: 15 Cents  
Entered as Second-Class Matter, May 2, 1917  
Postpaid at Chicago, Ill., May 2, 1917  
Acceptance for mailing at special rate of postage provided for in Act of October 3, 1917  
Authorized Second-Class Mail Matter  
Postage paid at Chicago, Ill.  
Copyright, 1938, by American Medical Association  
Printed at the American Medical Association Press, 535 N. Dearborn Ave., Chicago 10, Ill.

the judgment must be reversed, and in accordance with an unpublished decision of the Supreme Court at its last April term in Kirich v. T. J. Ferschner Contracting Co., the cause must be remanded for a new trial.

REVERSED AND REMANDED.

Gridley, P. J., and Fitch, J., concur.



1. The first of these is the fact that the  
2. second of these is the fact that the  
3. third of these is the fact that the  
4. fourth of these is the fact that the  
5. fifth of these is the fact that the  
6. sixth of these is the fact that the  
7. seventh of these is the fact that the  
8. eighth of these is the fact that the  
9. ninth of these is the fact that the  
10. tenth of these is the fact that the

• 1990-1991 44% 1991-1992 46% 1992-1993 48% 1993-1994 50%

HASKELL & BARKER CAR COMPANY,  
a corporation,  
Appellant,

vs.

UNITED CORK COMPANIES,  
a corporation,  
Appellee.

3833a  
234 I.A. 628

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

This is an action brought by appellant against appellee for breach of contract. The case was tried without a jury, and the court found the issues for defendant, and entered a judgment against plaintiff for costs. The main question of fact is whether there was a complete contract between the parties.

The offices of plaintiff were in Michigan City, Indiana, and one Reemer was its purchasing agent with offices in Chicago. Defendant's main office and factory were at Lyndhurst, N. J., and it had a sales office in Chicago in charge of its manager, Edwin J. Ward. Learning that plaintiff was in the market for cork for Santa Fe cars, Ward went to Reemer's office and submitted the price of 33 cents a square foot surface measure for deliveries in June and July, 1930. Reemer said that he would let Ward know later in the day, and late that afternoon telephoned him that plaintiff had decided to accept the offer, and that he would send a confirmatory letter, which he did on March 3, 1930, addressed to defendant at its said local office, confirming the verbal order at said price, and saying the official confirmation order will be sent within the next day or as soon as our mechanical department can advise the definite quantity required. On March 15,



2004-05-10

•

1978-1979 1980-1981 1982-1983

• 中國政府已與美國政府達成協議，將向美國政府提供有關中國核子彈頭數量的資料。

\*\*\*\*\*

\_\_\_\_\_

Source: *Journal of the American Statistical Association*, 1994, 89, 12, 2700-2709.

Downloaded At: 11:53 11 September 2009

© 1999 Blackwell Science Ltd *Journal of Internal Medicine* 245: 399–407

© 2000 Blackwell Science Ltd *Journal of Internal Medicine* 247: 399–406

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

... ..

\* 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2

...and the ... ..

© 2000 Blackwell Science Ltd *Journal of Internal Medicine* 247: 429–436

© 1999 Blackwell Science Ltd, *Journal of Internal Medicine* 245: 399–406

Downloaded At: 11:53 11 September 2009

Adopt the "Right" Language and conduct (Tests, projects, final exam, etc.)

of this work is to determine the effect of the following factors on the rate of

\*Official Statistics are not available for the period 1990-1991.

1920, he wrote to defendant addressed as before to furnish material of specified numbers of pieces of various dimensions at the price referred to F.O.B. Lyndhurst, N. J., subject to plaintiff's inspection and acceptance, and delivered on cars at plaintiff's works (Michigan City, Indiana). The order was designated as No. 105750. On the reverse side of the order was, "Shipment: To start at once and be completed by June 1st. \* \* \* The Santa Fe specifications state that these pieces must be cut perfectly square \* \* \*. Confirming verbal order given Mr. Ward," and called for inquiry of a Santa Fe engineer as to inspection before shipment. These letters from Reemer were signed in the name of plaintiff, by himself, as purchasing agent. To the letter or order of March 15, Ward replied as follows:

"March 18, 1920.

Haskell & Barker Car Co., Inc.,  
Michigan City, Indiana.

Re Your Order 105750

Gentlemen: Referring to your confirming order of March 15th covering requirements for Santa Fe refrigerator cars, we beg to advise we cannot accept your order in the manner in which it has been sent to us.

In the first place there was nothing whatever said about cutting to exact size. Our standard material will average about 90% of material 12" wide and 36" long and the balance of material will be 12" in width and varying from 12" to 36" in length. This is the only way we could ship, without being paid for waste of cutting also time for so doing.

Furthermore, you state shipment to start at once and be completed by June 1st. This is absolutely contrary to the original understanding which was to the effect we were to start shipments June 1st and complete same by August 1st, 1920.

With reference to inspection, we beg to advise we will subject our material to inspection at our factory at Lyndhurst, N.J. only, and not at your works.

It is only under the above conditions we will accept your order, and we would ask that you be kind enough to advise us promptly.

Yours very truly,  
United Cork Companies,  
Edwin J. Ward,  
Mgr."



1. The first reference is to the fact that the Commission has been asked to consider the possibility of a new system of taxation which would be based on the value of the property owned by the individual. This is a very important question, and the Commission is now studying it. It is also possible that the Commission will be asked to consider the possibility of a new system of taxation which would be based on the value of the property owned by the individual. This is a very important question, and the Commission is now studying it.

Figure 11

© 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679,

RECEIVED BY THE  
LIBRARY OF THE  
U.S. DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D.C. 20246

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 08-09-2001 BY SP6 BTJ/KRM

It is the first time that we have  
 been able to find a single one of these  
 animals in the wild. It is a very  
 rare animal and is found only in the  
 mountains of the Himalayas. It is a  
 very beautiful animal and is very  
 rare. It is a very beautiful animal  
 and is very rare. It is a very  
 beautiful animal and is very rare.

This letter came to the hands of Welles, assistant purchasing agent for plaintiff at Michigan City, who after inquiring at the mechanical department respecting the conditions therein named, telephoned Ward that they would be satisfactory and dictated to him a letter under date of March 20, 1920, saying:

"In line with your letter of March 18th, and confirming our telephone conversation of this morning, it is understood that you will furnish the 2" Corkboard on our order #10575-C in standard size widths, endeavoring to furnish sizes that will eliminate as much waste as possible.

Delivery of this order to start June first and be completed by August first.

Very truly yours,

Haskell & Barker Car Company, Inc.

F. O. Reemer

Purchasing Agent."

It does not appear that there was any further communication between the parties or their agents until the latter part of April (except a letter of April 9, from Reemer to Ward asking him to add sufficient standard size sheets for a certain number of additional pieces) to which there was no reply) when Ward called Reemer on the telephone and told him defendant "would have to have an extension of 60 days in the delivery of that material." Reemer advised him to communicate with Baker, who had charge of deliveries of material at plaintiff's office, which Ward did by telephone. Baker replied that he would let him know about the extension of time as soon as the mechanical department had an opportunity to check up in regard to the matter. This conversation was had about April 23. On April 26, Baker addressed a letter to defendant at its Chicago office, referring to the telephone conversation, saying they were trying to figure out what would be required in the way of shipments, and that he expected to be able to advise defendant toward the end of the week. On the same day Ward addressed a letter to plaintiff at Michigan City, attention of Mr. Baker, saying:



It is noted that the above information was obtained from the records of the Department of the Interior, Bureau of Land Management, and is being furnished to you for your information.

1. The first step in the process of identifying a potential threat to national security is to determine the nature of the threat. This involves a thorough analysis of the threat's source, its objectives, and its potential impact on the United States. Once the threat has been identified, the next step is to assess the threat's severity and the likelihood of it occurring. This assessment is based on a variety of factors, including the threat's capabilities, its intent, and the United States' ability to detect and respond to the threat. Finally, once the threat has been assessed, the United States must develop a strategy to counter the threat. This strategy may involve a combination of diplomatic, economic, and military measures, and it must be tailored to the specific threat and the United States' interests.

Copyright © 1994 by John Wiley & Sons, Inc.

It has been pointed out that the only way to prevent the spread of the disease is by the isolation of the infected individuals. This is a very difficult task, especially in the case of the smallpox virus, which is highly contagious. The isolation of the infected individuals must be carried out in a strict and systematic manner, and the isolation must be maintained for a sufficient period of time to ensure that the virus has been completely eliminated from the body. This is a very important measure, and it is one that must be taken in order to prevent the spread of the disease.

"We herewith beg to confirm verbal conversation of the 23rd, wherein we advised you we had received instructions from our factory that they would either have to have an extension of 60 days in the delivery of your O-15875-C covering your requirements for 1,250 Santa Fe cars or they would have to cancel said order.

Since the 22nd of March, we have been unable to move our raw materials, i.e., Cork waste from the docks in New York City, due, in the first place to the longshoremen's strike and in the second place being unable to obtain freight cars to transfer same to our factory. This, together with labor troubles at our plant has thrown us a full 60 days behind in our schedule.

We therefore must ask that you give us an immediate reply to the above, thereby obliging

Yours very truly,

United Cork Companies,

Edwin J. Ward,

Mgr."

To this letter Baker replied on April 30, saying:

"Do I understand correctly now, that you will complete our order by August 1? This will be satisfactory, provided we are able to get cork from the other manufacturers, and the indications are that we will. However, I think you should make an effort to give us two or three hundred car sets complete during June, balance during July."

Defendant through Ward, manager, replied on May 3, 1920, as follows:

"We beg to acknowledge receipt of yours of the 28th ult., but cannot understand where you have received the impression that we will complete your order by August 1st.

If you will kindly refer to our letter of March 18th and your answer to same under date of March 20th, you will find delivery of this order was to start June 1st and be completed by August 1st.

In our letter of April 26th confirming our verbal conversation of the 23rd we endeavored to convey to you that we must have an extension of 60 days to deliver this material. In other words, to deliver this material between August 1st and October 1st, or we would have to refuse acceptance thereof.

Kindly advise your wishes in regard to this matter."

On May 13, replying to the latter letter Baker wrote defendant, saying:



[illegible]

Old letter before written on wall 30. Contact

THE NEW YORK PUBLIC LIBRARY  
ASTOR LENOX TILDEN FOUNDATION  
455 FIFTH AVENUE  
NEW YORK 17, N.Y.

Received December 10, 1993; accepted February 1, 1994.

• *Journal of Management Education*

[illegible]

The subject was at present under 280 lbs. weight.  
He had been told by some of his friends that he would  
be able to lift more than 200 lbs. weight, and he had  
been told by some of his friends that he would be able  
to lift more than 200 lbs. weight.

[illegible]

1988

*Key to the genera in the family Liliaceae*

1248

"With reference to your letter of May 3rd about delivery of Corkboard on the above order for Santa Fe Cars.

The delivery you mention, viz.: August 1st to October 1st is very disappointing and is not at all as you agreed to do.

I am frank to say I do not think we will build the cars during the period we originally expected, but I do think we can complete over one-half of them by August 31st, so we hope you will find it possible to give us the Corkboard not later than during July and August, or all during August.

We will have to depend upon you for deliveries as required, as there is small likelihood of our being able to do any better on the outside at this late date."

There appears to have been no further communication until June 25, when defendant, through Ward, wrote plaintiff as follows:

"We are returning your C-10575-C, as both transportation and labor difficulties will not permit us to accept same."

This letter was acknowledged by plaintiff's vice-president June 29, 1920, saying the order had been in defendant's possession since March 15; that plaintiff was advised it had a binding contract with defendant for the material mentioned in the order, and on defendant's failure to promptly arrange for shipment, plaintiff would buy the material in open market, and if compelled to pay more than the contract price, would hold defendant for the excess. This was followed by a letter July 7, 1920, from Reemer to defendant returning the order and referring to the letter of June 29, and to the necessity of hearing from defendant before close of business on the 8th whether it would make shipment of the material. Another letter of plaintiff from Reemer, July 9, states that in the absence of a reply to the letter of July 7 plaintiff was placing an order with another concern for an equal amount of cork board called for in said order No. 10575-C.

On July 13, 1920, defendant wrote plaintiff from Lynchhurst, N. J. through its president, Edward Rose, saying:



[illegible]

and appears to have been an active participant in the  
same manner, though with less activity than the other

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

This feature was introduced in Windows 95.

[illegible]

9-2793-51

On 20th 11. 1955, following with Kennedy's

"Our Chicago Sales Office has forwarded to us your letters of June 27th, July 7th and 9th, addressed to them, with regard to an order you sent them on March 15th, 1920, No. 10575-C.

\* \* \* From the records in our office it does not seem that we have assumed any such obligation or even made a definite promise. \* \*

During the month of July, 1920, plaintiff bought cork board of the same quantity as called for in its order of March 18, being 218,571.8 square feet surface measure at 30½ cts., which was an excess of 7½ cts., a square foot above the price mentioned in the order of March 18, resulting in a loss from the breach, as claimed by plaintiff, of \$16,392.86. The price per square foot board measure on or about June 25, when plaintiff's order was returned by defendant was ¼ of a cent higher. No question arises as to these prices or measurements.

No dispute arises as to the foregoing facts. The only dispute is as to what was said in the said conversations.

It is plaintiff's theory that a contract was completed by the order No. 10575-C, and defendant's letter of March 18, 1920, together with either plaintiff's letter of March 20, 1920, or the telephone conversation of March 20, 1920, (between Mr. Waller and Mr. Ward) or both; that a completed contract is to be inferred from the conduct of the parties, and that defendant was bound by the act of its agent Ward.

It is the theory of appellee that the minds of the parties never met, that there was no acceptance of the contract by the home office of defendant, that there was no binding contract under the statute of frauds (Sec. 4 of the Uniform Sales Act), and that if there was a contract plaintiff can not recover damages because it did not offer to defendant the same terms which it offered to the company of which it bought the cork board.



1. The following information was obtained from the records of the Department of the Interior, Bureau of Land Management, regarding the land owned by the United States in the State of Nevada:

Revised the name of Ship, 1983, following request

level of the same country as subject for in the water of blood

1. The first is the *method of the case*, which involves the study of a single case or a small number of cases in order to identify the factors that are associated with the outcome of interest. This method is often used in the study of rare diseases or conditions, where the number of cases is too small to allow for a more traditional cohort or case-control study. The method of the case is also useful for the study of new or emerging diseases, where the number of cases is still small and the factors that are associated with the disease are not yet known.

using our simple first integral is  $\approx 1.4 \times 10^{-4}$ . In another paper we find

10/17/2004 11:41 AM, 12/17/2004 11:41 AM, 12/17/2004 11:41 AM

to forest, as shown by density, at 10, 15, 20, and 25 years after logging. The pattern

[illegible]

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

[illegible]

1. The first part of the document is a list of names and titles, including "The Hon. Mr. Justice" and "The Hon. Mr. Justice".

1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 26

1990-1991, 1991-1992, 1992-1993, 1993-1994, 1994-1995, 1995-1996, 1996-1997, 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021-2022, 2022-2023, 2023-2024, 2024-2025, 2025-2026, 2026-2027, 2027-2028, 2028-2029, 2029-2030, 2030-2031, 2031-2032, 2032-2033, 2033-2034, 2034-2035, 2035-2036, 2036-2037, 2037-2038, 2038-2039, 2039-2040, 2040-2041, 2041-2042, 2042-2043, 2043-2044, 2044-2045, 2045-2046, 2046-2047, 2047-2048, 2048-2049, 2049-2050, 2050-2051, 2051-2052, 2052-2053, 2053-2054, 2054-2055, 2055-2056, 2056-2057, 2057-2058, 2058-2059, 2059-2060, 2060-2061, 2061-2062, 2062-2063, 2063-2064, 2064-2065, 2065-2066, 2066-2067, 2067-2068, 2068-2069, 2069-2070, 2070-2071, 2071-2072, 2072-2073, 2073-2074, 2074-2075, 2075-2076, 2076-2077, 2077-2078, 2078-2079, 2079-2080, 2080-2081, 2081-2082, 2082-2083, 2083-2084, 2084-2085, 2085-2086, 2086-2087, 2087-2088, 2088-2089, 2089-2090, 2090-2091, 2091-2092, 2092-2093, 2093-2094, 2094-2095, 2095-2096, 2096-2097, 2097-2098, 2098-2099, 2099-2100, 2100-2101, 2101-2102, 2102-2103, 2103-2104, 2104-2105, 2105-2106, 2106-2107, 2107-2108, 2108-2109, 2109-2110, 2110-2111, 2111-2112, 2112-2113, 2113-2114, 2114-2115, 2115-2116, 2116-2117, 2117-2118, 2118-2119, 2119-2120, 2120-2121, 2121-2122, 2122-2123, 2123-2124, 2124-2125, 2125-2126, 2126-2127, 2127-2128, 2128-2129, 2129-2130, 2130-2131, 2131-2132, 2132-2133, 2133-2134, 2134-2135, 2135-2136, 2136-2137, 2137-2138, 2138-2139, 2139-2140, 2140-2141, 2141-2142, 2142-2143, 2143-2144, 2144-2145, 2145-2146, 2146-2147, 2147-2148, 2148-2149, 2149-2150, 2150-2151, 2151-2152, 2152-2153, 2153-2154, 2154-2155, 2155-2156, 2156-2157, 2157-2158, 2158-2159, 2159-2160, 2160-2161, 2161-2162, 2162-2163, 2163-2164, 2164-2165, 2165-2166, 2166-2167, 2167-2168, 2168-2169, 2169-2170, 2170-2171, 2171-2172, 2172-2173, 2173-2174, 2174-2175, 2175-2176, 2176-2177, 2177-2178, 2178-2179, 2179-2180, 2180-2181, 2181-2182, 2182-2183, 2183-2184, 2184-2185, 2185-2186, 2186-2187, 2187-2188, 2188-2189, 2189-2190, 2190-2191, 2191-2192, 2192-2193, 2193-2194, 2194-2195, 2195-2196, 2196-2197, 2197-2198, 2198-2199, 2199-2200, 2200-2201, 2201-2202, 2202-2203, 2203-2204, 2204-2205, 2205-2206, 2206-2207, 2207-2208, 2208-2209, 2209-2210, 2210-2211, 2211-2212, 2212-2213, 2213-2214, 2214-2215, 2215-2216, 2216-2217, 2217-2218, 2218-2219, 2219-2220, 2220-2221, 2221-2222, 2222-2223, 2223-2224, 2224-2225, 2225-2226, 2226-2227, 2227-2228, 2228-2229, 2229-2230, 2230-2231, 2231-2232, 2232-2233, 2233-2234, 2234-2235, 2235-2236, 2236-2237, 2237-2238, 2238-2239, 2239-2240, 2240-2241, 2241-2242, 2242-2243, 2243-2244, 2244-2245, 2245-2246, 2246-2247, 2247-2248, 2248-2249, 2249-2250, 2250-2251, 2251-2252, 2252-2253, 2253-2254, 2254-2255, 2255-2256, 2256-2257, 2257-2258, 2258-2259, 2259-2260, 2260-2261, 2261-2262, 2262-2263, 2263-2264, 2264-2265, 2265-2266, 2266-2267, 2267-2268, 2268-2269, 2269-2270, 2270-2271, 2271-2272, 2272-2273, 2273-2274, 2274-2275, 2275-2276, 2276-2277, 2277-2278, 2278-2279, 2279-2280, 2280-2281, 2281-2282, 2282-2283, 2283-2284, 2284-2285, 2285-2286, 2286-2287, 2287-2288, 2288-2289, 2289-2290, 2290-2291, 2291-2292, 2292-2293, 2293-2294, 2294-2295, 2295-2296, 2296-2297, 2297-2298, 2298-2299, 2299-2300, 2300-2301, 2301-2302, 2302-2303, 2303-2304, 2304-2305, 2305-2306, 2306-2307, 2307-2308, 2308-2309, 2309-2310, 2310-2311, 2311-2312, 2312-2313, 2313-2314, 2314-2315, 2315-2316, 2316-2317, 2317-2318, 2318-2319, 2319-2320, 2320-2321, 2321-2322, 2322-2323, 2323-2324, 2324-2325, 2325-2326, 2326-2327, 2327-2328, 2328-2329, 2329-2330, 2330-2331, 2331-2332, 2332-2333, 2333-2334, 2334-2335, 2335-2336, 2336-2337, 2337-2338, 2338-2339, 2339-2340, 2340-2341, 2341-2342, 2342-2343, 2343-2344, 2344-2345, 2345-2346, 2346-2347, 2347-2348, 2348-2349, 2349-2350, 2350-2351, 2351-2352, 2352-2353, 2353-2354, 2354-2355, 2355-2356, 2356-2357, 2357-2358, 2358-2359, 2359-2360, 2360-2361, 2361-2362, 23

2.1. Domestic Production - 2.1.1. 1990 - 1991

\_\_\_\_\_

.. . . .

and to obtain the best advantage to yourself and all

10-11-68

© 2004 Blackwell Publishing Ltd, *Journal of Internal Medicine* 255: 103–110

Source: *Journal of the American Statistical Association*, 1997, 92(439), 1039-1047.

SECRETARY OF THE ARMY

[illegible]

1990-1991

Appellee's main contention is that because no reference was made in the letter of March 20, to the subject of inspection it did not constitute a complete acceptance of the counter offer in defendant's letter of March 18. It will be noted that the letter of March 18 stated three conditions necessary to the acceptance of the order, and asked to be advised promptly respecting them. These conditions required shipment of the material in standard sizes and deliveries between June 1st and August 1st, and inspection at defendant's factory. After the letter was written and before it was answered, Wallis and Ward conversed by telephone respecting these conditions. Wallis testified that after ascertaining that the conditions were satisfactory he telephoned Ward to that effect, and that inspection at the point of manufacture or entering seaport was satisfactory. While Ward was uncertain whether he called up Wallis or Wallis called him up, he testified that he felt concern in not getting a reply to the letter of the 18th, and denied that Wallis said inspection at defendant's works would be satisfactory.

In view of Ward's solicitude to get the order as soon as possible, it is singular that no allusion to inspection was subsequently made in any correspondence, and that defendant should have sought an extension of time for completing the order because of conditions that subsequently arose, if it did not assume that the terms of the order had been fully agreed upon. Ward testified that in his telephone conversation had a month later, about April 23, with Baker respecting the necessity of an extension of time he again referred to the subject of inspection. While Baker recalled no such conversation it seems strange that the letter of April 26, confirming that conversation, should refer only to the matter of extension, or should even ask for an extension if defendant did not regard the terms of the





contract as already settled. That defendant should seek a change in one condition only, would seem to imply that the others were agreed upon and satisfactory. The order was one of considerable magnitude, and if Ward was so solicitous to have terms closed that he could not wait two days for a reply to his letter of March 18 without telephoning to see if his conditions would be accepted it is not easily explained why after receiving the letter of March 20 he did not again telephone or write about the question of inspection if he regarded it an open one instead of waiting over a month, and then write not about inspection but for an extension of time for delivery. Under such circumstances the alleged conversation about inspection with Baker looks much like an after thought. In this connection it will be noted that plaintiff's letter of March 18 refers to the right of inspection without mentioning any place therefor. It was probably because in that letter defendant was requested to inquire of the Santa Fe engineer as to his desire to make inspection prior to shipment that defendant referred to its requirement of inspection at its factory. The correspondence does not indicate that the subject of inspection was ever in question after March 20, and we cannot but regard the letter of that date, especially in view of defendant's subsequent conduct, as indicating a complete acceptance of defendant's conditions.

Defendant's authorities on this subject relate mostly to cases where the reply to an offer either varied its terms or contained some counter proposal. The letter of March 20, 1920, is not of that character. It merely omits reference to the subject of inspection, which had become the subject of conversation about which there was no claim of any want of harmony. The letter not only purports to confirm that conversation but to be "in line" with defendant's letter of March 18, and we do not think it can be reasonably construed otherwise than indicating an obvious



The following is a list of the names of the persons who have been appointed to the various committees of the National Council of the American People, for the year 1934. The names are given in alphabetical order of the names of the committees.

intention of plaintiff to accept the conditions or counter offer of defendant's letter of March 18, and the subsequent conduct of defendant indicates that the letter was so regarded. (Sec. 3, Uniform Sales Act, ch. 181a, par. 6, Cahill's Stats. 1923.) In this view of the case it is of little importance whether there was an oral acceptance of the conditions named in the letter of March 18, but in view of defendant's subsequent conduct it might be inferred that there was. There is nothing inconsistent in accepting a written order both by word of mouth and in writing. (Metropolitan Coal Co. v. Boutell T & T. Co., (Mass.) 81 N. E. 643; Beach & Clarridge Co. v. American Steam Gauge & Valve Mfg. Co., 88 N. E. 924.) It was said in Anglo American Provision Co. v. Prentiss, 157 Ill. 506, that an acceptance need not be in writing, but it may be made orally or be inferred from the conduct of the other party. (See also Farwell v. Lothar, 18 Ill. 252; Willsperger v. Meyer, 217 Ill. 262.)

Nor is it necessary in order to take the contract of sale out of the statute of frauds (Sec. 4 Uniform Sales Act) that there be a formal written contract where, as in case of the instant state of facts, letters between the parties relating to the subject matter may be said to constitute one paper relating to the contract. It is sufficient and binding under the statute of frauds if one of the writings is signed by the party to be charged. (Western Metals Co. v. Hartman Ingot Metal Co., 303 Ill. 479; Farwell v. Lothar, supra.) While not admissible for that purpose no oral evidence is necessary to show that the three letters of March 15, 18 and 20 relate to the same subject matter. It is sufficient if they are so connected as to show by internal evidence that they relate to the same contract. (Western Metals Co. v. Hartman Ingot Metal Co., supra.)



The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Communist Party in the United States. The second is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Communist Party in the United States. The third is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Communist Party in the United States.

As to Ward's authority to make the contract, though not directly proved, we think it may be inferred from the facts and circumstances of the case. He represented a foreign corporation which had a local sales office, of which he was manager, and which was held out to be such on the letterheads used in the local business and said correspondence. Upon a similar state of facts it was held in Faber-Musser Co. v. Dee Clay Manufacturing Co., 291 Ill. 240, that a person of ordinary prudence, conversant with business usages and the nature of business affairs would be justified in presuming that a person in charge of such a principal office in the State would be authorized to bind the company in any business transaction within the scope of its ordinary business.

And if there were any doubt of Ward's authority to make the contract we think there is sufficient evidence from which a ratification of it may be inferred. It appears that the letter of March 3, confirming plaintiff's verbal order was received by defendant at its main office (Lyndhurst) March 24, 1920. It was also testified to by Ward that wires were exchanged with the New York office respecting the negotiations, and in his letter of April 26 he refers to the fact that he had advised plaintiff that he "had received instructions from our factory \* \* \* ." While Mr. Bose, president of defendant, testified that he did not know of such order it appears that he was ill while these negotiations were in progress, and that Mr. Binzel, secretary of the defendant and manager of the New York office, had charge of the plant as well as the New York office at that time and that he must have had knowledge of the pendency of the negotiations. The fact that the request for an extension came to Ward from the factory over a month after the negotiations were completed indicates knowledge of them at the home office. If defendant did not intend to become bound by the act of its





agent it was its duty to repudiate the act as soon as it was fully informed of what had been done by him or within a reasonable time thereafter. (Ward v. Williams, 36 Ill. 447, 451; Emu Claire Canning Co. v. Western Brokerage Co., 213 Ill. 561; McGeech v. Hooker, 11 Ill. App. 649.) As it was defendant held the original order for four months before it questioned that there was a completed contract. We deem it immaterial, therefore, whether plaintiff was advised or not of the necessity of submitting the contract for approval at the home office by defendant. Under the circumstances ratification will be presumed from defendant's silence and failure to repudiate the agent's act, and the principal will be estopped from denying his authority. (Canning Co. v. Brokerage Co., 213 Ill. 561, 591; Searing et al. v. Butler et al., 69 Ill. 575.)

We fail to see any force in the contention that plaintiff should have offered defendant the opportunity to fill the order after it was guilty of a breach of the contract. The only duty plaintiff owed defendant thereafter was to purchase the goods at the lowest price possible so as to avoid unnecessary damages to defendant.

In this view of the case we need not discuss the propositions of law given and refused. We think they should have conformed to the theory of the facts as above stated. The court was either wrong respecting the facts or the law to be applied to them. A reversal is, therefore, necessary, and a majority of the court think the cause should be remanded.

REVERSED AND REMANDED.

Gridley, P. J., and Fitch, J., concur.





132 - 26784

BARNARD & MILLER,  
a corporation, Appellee,

vs.

EDWARD M. SEYMOUR and  
LILLIAN R. SEYMOUR,  
Appellants.

234 I.A. 629

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

By this appeal defendants seek to reverse a judgment against them for money alleged to be due on a lost promissory note for \$100. The note was dated October 3, 1913, was due ninety days after its date, and was payable to the order of "Barnard & Miller," which at that date was the name of a partnership composed of Frederick Barnard and John J. Miller. Frederick Barnard died on April 10, 1914, and in May, 1914, the surviving partner, John J. Miller, brought suit on this note, and on another note for \$67.50, in the Municipal Court, where copies of the notes were filed with the statement of claim. In that case the defendants filed a claim of set-off for \$100 "for legal services rendered." The suit was never tried, however, but on March 4, 1915, was dismissed for want of prosecution. In August, 1914, the plaintiff corporation was formed and acquired all the assets of the partnership, including said notes.

The only defense mentioned in the affidavit of merits filed in the present case is that plaintiff was "not in existence" when the note in question was signed, and therefore, it is alleged, defendants "never signed any notes to the said plaintiff." This defense is technically true;



8314.188

APR 1968

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 11/19/01 BY 60322 UCBAW

STANDARD FORM NO. 64 (REV. 1-60)

[illegible]

THE ONLY PERSONS ADMITTED TO THE UNIVERSITY AT  
THIS TIME IN THE EVENING WERE THE STUDENTS AND THE  
"GUESTS" WHO WERE IN POSSESSION OF A PASS, AND  
CONSEQUENTLY IT IS ALLEGED THAT THE "GUESTS" WERE  
THE ONLY PERSONS ADMITTED TO THE UNIVERSITY AT  
THIS TIME IN THE EVENING WERE THE STUDENTS AND THE  
"GUESTS" WHO WERE IN POSSESSION OF A PASS, AND  
CONSEQUENTLY IT IS ALLEGED THAT THE "GUESTS" WERE

but after plaintiff had shown that the corporation succeeded to the assets of the partnership, the trial judge permitted the defendants to offer in evidence the claim of set-off filed in the first suit, and permitted one of the defendants, E. M. Seymour, to testify that the attorney who acted for him in the first case, and who has since died, "paid \$67.50 and my claim for services rendered," for the notes and received them from Barnard & Miller on February 25, 1915, and that he, Seymour, saw the cancelled notes in the hands of his former attorney, and that the suit then pending was dismissed March 4, 1915. Seymour also offered in evidence a page of one of his account books, in which there is an ambiguous entry, in his handwriting, which, he testified, shows that on February 25, 1915, he paid \$67.50 to Frederick W. Barnard.

John J. Miller, the surviving partner of the partnership of Barnard & Miller, testified that the notes were "returned to Barnard & Miller after it was incorporated, but were lost in our office," and that the only payment ever made on either note was \$5 by E. M. Seymour on the note for \$67.50. The attorney who brought suit on the notes in 1914 testified that he had several talks with E. M. Seymour in which Seymour said he owed the money and promised to pay it but asked for time, and once gave him five dollars on account, but that no other payment was ever made on either of the notes so far as he knew.

Defendants insist that the defense of payment was established. Plaintiff's counsel deny this and contend that as no such defense is mentioned in the affidavit of merits, it was not available to defendants in the Municipal Court. The rules of the Municipal Court regarding the filing of an affidavit of merits are not in the record, and we are not per-



[illegible][illegible]

The following is a list of the names of the persons who were present at the meeting of the Board of Directors of the American Red Cross, held on the 10th day of June, 1918, at the Hotel New York, New York.

mitted to take judicial notice of them. (Sixby v. Chicago City Ry. Co., 260 Ill. 478.) Aside from that, however, the bill of exceptions does not show that any objection was made upon the trial to the evidence regarding payment. The present suit was brought in November, 1922, nearly nine years after the notes in question were executed, during which time the originals have been lost or destroyed. The evidence of Mr. Seymour as to the alleged settlement and the cancellation of the notes is positive, while that of plaintiff's witnesses is of a negative character only. Frederick W. Barnard, to whom \$67.50 is alleged to have been paid in the settlement, did not testify, though it appears from the briefs of counsel he is still living and apparently available as a witness. As the record now stands, the finding should have been for defendants, and for that reason, the judgment will be reversed and the cause remanded for a new trial.

REVERSED AND REMANDED.

Gridley, F. J., and Barnes, J., concur.



It is a fact that the Government has been unable to obtain any reliable information from the sources mentioned above, and that the only information available to it is that which has been furnished by the Government of the United States. The Government of the United States has been unable to obtain any reliable information from the sources mentioned above, and that the only information available to it is that which has been furnished by the Government of the United States.

[illegible]

133 - 28785

BARNARD & MILLER,  
a corporation, Appellee,

vs.

EDWARD M. SEYMOUR,  
Appellant.

3835a  
234 I.A. 629

APPEAL FROM

MUNICIPAL COURT  
OF CHICAGO.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

This appeal involves the second note referred to in the opinion this date filed in the case of Barnard & Miller v. Seymour, No. 28784. The two suits were heard together, but separate judgments were entered because the first was against two defendants and this suit is against only one. The briefs filed in this case are identical with those filed in the other case, and for the reasons stated in the opinion in that case, the judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

Gridley, P. J., and Barnes, J., concur.



883 A.1.883

1911

1911

1911

1911

1911

THE UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
WASHINGTON, D. C.  
OFFICE OF THE ASSISTANT ATTORNEY GENERAL  
WASHINGTON, D. C.  
RECEIVED  
JAN 11 1911  
1911

1911

1911

28334

179 - 28334

LEO BAUM,  
Appellee,  
  
vs.  
  
THE HYDROX COMPANY,  
a corporation,  
Appellant.

28334  
284 I.A. 629

APPEAL FROM  
MUNICIPAL COURT  
OF CHICAGO.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

This is a suit for damages occasioned by the carelessness of an alleged servant of defendant in driving one of defendant's auto delivery trucks against the side of plaintiff's automobile while the latter was standing at the curb on the east side of Michigan avenue near 29th street, Chicago, thereby stripping off the left hand running board and fenders and breaking one of the right wheels. The defendant denied that the driver of the truck was its servant. The court found the issues for the plaintiff and assessed damages at \$132.09. Defendant appeals.

Defendant does not contest the charge of negligence on the part of the man in charge of the truck at the time the accident happened, nor dispute defendant's ownership of the truck, and no question of contributory negligence is involved. Several assigned errors are relied on, but the main question - and the only one we deem it necessary to discuss or decide - is whether defendant is legally responsible for the negligent act of the man who was driving its truck at the time of the accident.

For more than two years before the accident happened, defendant had in its employ one Glenn Hand, whose position with the defendant company was that of an "ice cream driver," that is, he drove one of defendant's auto trucks, loaded with



2311A.759

THOMAS HUGH

WESTERN UNION

OF CHICAGO

Special

at

WESTERN UNION

CHICAGO, ILL.

NO. 2311A.759 WITH FOLLOWING MESSAGE TO THE WEST.

This is a well known statement by the

management of an alleged person of influence in Chicago

and of importance to the public interest. The fact is

that the statement is a complete and accurate statement of the

fact as the fact is of Chicago and is not a

statement, merely a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

fact is a statement of the fact that the

ice cream, over a "route" along which he delivered ice cream to customers. For this work he was paid ten dollars a week and a commission on his sales. He had a helper named Stark, whom he hired and paid, to help him in making his deliveries, and who was not in the employ of the defendant, nor subject in any way to its control. Defendant's superintendent testified that he knew Hand employed a helper, and knew that it was customary for defendant's drivers to employ helpers if they saw fit to do so, to which custom defendant made no objection; but, he testified: "Helpers do not drive the trucks." Hand testified that he was a licensed chauffeur; that while driving for defendant, he had never allowed his helper to drive his truck; that "no driver allows his helper to drive his truck," because "there is a \$35 fine in the union" for so doing; that Stark had been his helper for six weeks prior to the accident and during that time he had never driven the truck; that "Stark could not drive a truck;" that he had attempted to do so once and ran into a curb.

On the morning of the day of the accident, Hand and Stark started from the yard of the Hydrex Company, at 24th street and Lake Park avenue, with a loaded truck, to make deliveries. Hand's route covered the territory from 47th street to 63rd street, west of Ashland avenue. During the day they "had a few drinks," and on their way back, in the afternoon, they stopped at Hand's room on 44th street near Indiana avenue. Hand and Stark do not agree as to what occurred thereafter. Hand testified that both went up to his room "to get something to eat and a little wine," leaving the truck "outside;" that he fell asleep and did not awaken until seven o'clock, when he found the truck was gone and telephoned to the defendant asking "if they knew anything about it." He denied that he told Stark to go on with the truck. Stark testified that when they reached



[illegible][illegible]

Work started from the point of the lowest frequency of 2.00

1944-1945

the state's capital in 1900, and the state's capital in 1900.

Don't want you to be injured, because I'll be in there, too.

[illegible]

SECRET

*Journal of Interpersonal Violence* 26(10) 1978-1997  
© The Author(s) 2011  
Reprints and permissions: <http://www.sagepub.com/journalsPermissions.nav>

THE UNIVERSITY OF CHICAGO

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

1944

[illegible]

the corner of 44th street and Indiana avenue he did not go to Hand's room, but that Hand left the truck saying he was going home, and directed Stark to meet him at 26th street and Cottage Grove avenue; that Hand was then "pretty sick, I guess, or slightly drunk," and "I guess I was pretty drunk;" that he (Stark) had driven the truck "quite often" before that, but never was told to do so by anyone connected with the Hydrex Company. Twenty or twenty-five minutes later, while Stark was driving north on Michigan avenue, the accident occurred.

From this evidence, it clearly appears that defendant did not hire Stark and had no power to discharge him, that he was Hand's employe and not defendant's, and that defendant had no knowledge that Stark had ever driven its truck, with or without the permission of Hand. Under the pleadings, the burden of proving that Stark was the servant of the defendant and acting as such at the time of the accident, was upon the plaintiff, and we are of the opinion that plaintiff did not sustain that burden. There is not the slightest evidence that defendant exercised any control whatever over Stark, or that it ever knowingly permitted him to drive the truck. There is no competent evidence that Hand knew that Stark was driving the truck at the time of the accident. That theory rests alone on Stark's testimony that Hand told him to drive the truck to 26th street and Cottage Grove avenue. This was incompetent. Moreover, Stark very frankly admitted he was "pretty drunk," and his statements as to what Hand said to him a few minutes before the accident, even if they were competent, are no more reliable than those of Hand, who admits his recollection of what occurred at that time is not clear; and Hand's testimony as to matters that occurred when they were not drunk is quite as reasonable and probable as that of Stark.

For the reasons indicated, the judgment of the Municipal Court will be reversed with a finding of fact.

REVERSED WITH A FINDING OF FACT.

Gridley, F. J., and Barnes, J., concur.



[illegible]

179 - 28834

FINDING OF FACT.

The court finds that the man who was driving defendant's truck at the time of the accident and whose negligence was the proximate cause of the same was not the agent or servant of the defendant, and was driving the truck without defendant's authority, permission or consent.



# THE HISTORY OF THE

The history of the world is a long and tedious story, but it is one that is full of interest and variety. It is a story that has been told in many different ways, and it is one that is always changing. The history of the world is a story that is full of many different people, places, and events. It is a story that is full of many different experiences, and it is one that is always changing. The history of the world is a story that is full of many different people, places, and events. It is a story that is full of many different experiences, and it is one that is always changing.

THE HISTORY OF THE

WALTER VOLMAN and PAUL F. TURNER,  
co-partners, doing business as  
LOWE'S MANUFACTURING COMPANY,  
Appellees,

vs.

R. E. GERHARDT COMPANY,  
a corporation,  
Appellant.

3837a  
234 I.A. 629

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

In January, 1920, the parties to this suit entered into a written contract by the terms of which plaintiffs agreed to manufacture, sell and deliver to defendant their "entire present output" of artificial paper flowers of certain specified kinds, for which defendant agreed to pay certain specified prices, payments to be made twice a month during the term of the contract, which was to be in effect for a period of two years, subject to a revision of prices after the first year. Plaintiffs also expressly agreed "not to manufacture, deliver, sell or offer for sale," any of such flowers "to any other wholesale dealer, jobber, agent, broker, et cetera, except to retail trade, during the life of this contract."

Plaintiffs at once began the manufacture of flowers such as were specified in the contract, which, as soon as they were manufactured, were taken away by the defendant, and paid for according to the agreement. In September, 1920, an over-supply of the flowers had accumulated and plaintiffs sent a bill for them to defendant, and soon after, asked defendant to remove them because plaintiff needed the room they occupied; whereupon one of defendant's officers replied that defendant was over-stocked, and asked plaintiffs to hold the goods for





the time being. To this plaintiffs agreed. Defendant thereafter "called out" only small quantities of flowers. Plaintiffs claim that they made further requests of the defendant, several times before the end of the year 1920, to take away the accumulated merchandise, but were each time requested to hold the goods.

On January 26, 1921, plaintiffs wrote a letter complaining that defendant had not done as it had agreed in October, to "resume taking over our output in roses Nos. 57 and 59, as stated in the contract, in a very short time." Receiving no answer to this letter, plaintiffs sent a bill for the contract price of all goods on hand, all of which, as the evidence tends to prove, were manufactured in 1920. Defendant refused to pay the bill and plaintiffs brought suit for such contract price. Defendant made an attempt to show that the quality of the flowers was inferior, but its counsel have apparently abandoned that defense. They insist that plaintiffs cannot recover the contract price, as such, but can only recover damages for breach of the contract, measured by the difference between the contract price and the market price of such goods at the time and place of the breach; and, as there was no proof of such market price, they claim the finding and judgment are wrong.

The first reply of plaintiffs' counsel to this argument is to point out that in the bill of exceptions there is no certificate, signed by the trial judge, to the effect that such bill contains all the evidence in the case. We have examined the bill of exceptions and find that this is true.

There is an affidavit of one of defendant's attorneys appended to the bill, stating "that the foregoing is a true and correct transcript of the testimony," but the judge does not certify



...the policy, in this particular respect, ...  
...the "policy" will only ...  
...the fact that ...  
...the fact that ...  
...the fact that ...  
...the fact that ...

On January 20, 1901, ...  
...the fact that ...  
...the fact that ...  
...the fact that ...

...the fact that ...  
...the fact that ...  
...the fact that ...  
...the fact that ...

...the fact that ...  
...the fact that ...  
...the fact that ...  
...the fact that ...

...the fact that ...  
...the fact that ...  
...the fact that ...  
...the fact that ...

...the fact that ...  
...the fact that ...  
...the fact that ...  
...the fact that ...

...the fact that ...  
...the fact that ...  
...the fact that ...  
...the fact that ...

that such transcript contains all the evidence, nor does the transcript itself recite that such is the fact. For this reason, if for no other, the judgment of the trial court must necessarily be affirmed, as it is our duty to presume, if the evidence certified is insufficient to sustain the judgment, that there was other evidence, not included in the bill of exceptions, sufficient to justify the finding and judgment of the trial court.

However, in view of the very earnest contention of defendant's counsel, we have examined the authorities submitted and the arguments presented on the proposition so advanced, and we do not hesitate to say that we think the contract price was properly allowed under the facts shown in this case.

The rights and liability of the parties are to be determined by the provisions of the Uniform Sales Act. In the contract in question, no place of delivery is specified. Section 43 of the Sales Act provides that where such is the fact, the place of delivery is the seller's place of business. The evidence clearly shows that the flowers were manufactured there and held there at defendant's request, subject to the order of the defendant. This was a sufficient delivery of the goods in question to the defendant, and the property in the goods thereby passed to defendant.

Even if the contract could be otherwise construed, section 19 of the Sales Act provides that "where there is a contract to sell \* \* future goods by description, and goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the assent of the buyer, or by the buyer with the assent of the seller, the property in the goods thereupon passes to the buyer." The evidence shows that the contract in this



1. The first point is that the evidence is not sufficient to establish that the defendant is guilty of the crime charged. The evidence is circumstantial and does not directly prove the crime.

It is not possible to say that the results of the study are in any way conclusive. The study was limited by the small number of subjects and the lack of a control group. The results of the study are in line with the findings of other studies, but further research is needed to confirm the results.

[illegible][illegible]

case was of that character, and that goods of the description specified in the contract and in a deliverable state were unconditionally appropriated to the contract by the seller with the assent of the buyer; therefore, by the express terms of the statute, the property in the goods passed to the defendant. Where the property has passed to the buyer, and where, as in this case, the buyer wrongfully refuses or neglects to pay for the goods, the right of the seller to maintain an action against the buyer for the contract price of the goods is specifically given by section 63 of the Sales Act.

Defendant's counsel seem to think that if so construed, section 63 of the Sales Act is repugnant to section 64, which was amended since the original act was adopted. There is no such repugnancy. Section 63 covers cases in which an action for the contract price may be maintained, while section 64 covers cases where acceptance was refused or the contract repudiated, in which cases the action must be for damages only. Upon the undisputed facts of this case, we think plaintiffs' action was properly brought under section 63.

For the reasons stated, the judgment is affirmed.

AFFIRMED.

Gridley, F. J., and Barnes, J., concur.





200 - 28357

F. H. CUMMINGS, Jr.,  
Appellee,

vs.

JOSEPHINE FORSTER,  
Appellant.

3838a  
234 I.A. 630

APPEAL FROM

MUNICIPAL COURT  
OF CHICAGO.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

Upon a trial without a jury plaintiff recovered a judgment against the defendant for \$240, which sum the plaintiff claims to be due him as an agreed commission for his services as a real estate broker in finding a purchaser for defendant's real estate on terms specified by the defendant. In his statement of claim plaintiff alleges that during all of the time of the transactions in question, which occurred in the year 1922, he was in the real estate brokerage business in Chicago and was duly licensed as a real estate broker by that city. This he proved. He admitted, however, that he was not licensed by the state of Illinois to act as a real estate broker or real estate salesman. The defendant contends that this admission bars any right of recovery and that the judgment must therefore be reversed. The point was made in the trial court, and when overruled, the proper exceptions were noted.

Section 1 of the act of 1921 in relation to the registration and regulation of real estate brokers and real estate salesmen (Cahill's Statutes, Chap. 17a) provides that on and after January 1, 1922, it shall be unlawful for any person to act as a real estate broker or real estate salesman without a certificate of registration issued by the



O.G. 46.1.1.88

Figure 1

1. The first group of people who are interested in the study of the history of the United States are the people who are interested in the history of the United States.

Y

STUDENT NAME: \_\_\_\_\_  
\* Roll No: \_\_\_\_\_

There is a small amount of space available for a short notice.

the same value, with yet another set of unique numbers.

Abstracts of the 1997 Annual Meeting of the American Psychological Association, Washington, DC, August 1-5, 1997.

A variation on a well-known result of Theorem 1 is presented in Corollary 2.

...the fact that the ... ..

Before our study, it was already shown to be important that all

I am, Sir, very respectfully,  
Your obedient servant,  
J. B. [Signature]

This report was prepared under contract DA-36-074-MD-0001, 1974-1975.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

[illegible]

THE UNIVERSITY OF CHICAGO LIBRARY

Table 1. *Continued*

and this information has my right of privacy and that the

At this time, the following are members of the Board of Directors: Robert A. ...

Smallpox is a highly contagious disease that can be fatal. It is caused by the smallpox virus, which is a member of the poxvirus family. The virus is spread through direct contact with infected individuals or through the air. Symptoms include fever, fatigue, and a characteristic skin rash that progresses to blisters and eventually scabs. Smallpox was declared eradicated in 1980, but the virus still exists in a few laboratories. There is a concern that the virus could be used as a biological weapon.

\* 2000년 12월 31일 현재

Approved for release by NSA on 08-29-2013 pursuant to E.O. 13526

Letter from President Clinton must be submitted in a separate envelope.

*Journal of Interpersonal Violence* 26(10) 1978-1994  
© The Author(s) 2011. Reprints and permissions:  
<http://www.sagepub.com/journalsPermissions.nav>

[illegible]

Wash. D.C. 20540

Department of Registration and Education. Section 3 provides how such a certificate may be obtained. Section 4 makes it the duty of every real estate broker to conspicuously display his certificate in his place of business and to notify the Department of any change of his business location. The same section provides that the Department shall deliver to each "registrant" a pocket card of a prescribed size, which card shall certify, under the seal of the Department, that the person whose name appears thereon is a registered real estate broker or real estate salesman, as the case may be. Other sections of said act provide for the fees to be paid upon the issuance of each such certificate of registration, which must be renewed annually; that any certificate issued under the provisions of said act may be revoked by the Department, after notice and an opportunity to be heard, for misconduct amounting to dishonest dealing; and that a list of all registrants and of all persons whose certificates have been suspended or revoked be published semi-annually. Section 16 of the act provides a heavy penalty for violations, and section 17 provides that nothing contained in the act shall affect the power of cities and villages to tax, license and regulate real estate brokers, but that the requirements of said act shall be in addition to those of any such ordinance of any city or village.

It appears that in September, 1922, defendant executed and delivered to the plaintiff a written contract in which the defendant gave to the plaintiff the exclusive agency to find a purchaser for defendant's property for a price and upon terms therein mentioned, and in case of any sale of the premises during the life of said contract, defendant agreed to pay a commission of \$240. It also



It seems that in January, 1907, the  
United States Government was planning a mission to  
visit the islands in the Pacific. The mission  
was to be led by a member of the Government  
and was to be a mission of peace and friendship.  
The mission was to be a mission of peace and  
friendship and was to be a mission of peace  
and friendship.

appears that in less than a month thereafter plaintiff found a purchaser, who signed a formal contract for the purchase of said property for the price and on the terms mentioned in the agency contract, but that defendant then refused to sell, or to execute any contract of sale with the proposed purchaser.

The law is well settled in this state that where the subject matter of an agreement is prohibited and made unlawful by statute, it cannot be enforced, even though the statute merely inflicts a penalty upon an offender and does not in terms declare the contract void. (O'Neill v. Sinclair, 193 Ill. 525; Douthart v. Condon, 197 Ill. 349, 353; 4 R.C.L. 45.) No case in this state has been cited which has departed in any manner from the principle so declared. The application of this principle to the admitted facts prevents the plaintiff from recovering the stipulated commission, even if earned.

Plaintiff's counsel cites cases in which it has been held that in a suit by a real estate broker to recover a commission, it is not necessary for the plaintiff to allege or to prove, in the first instance, that he had a broker's license at the time the services in question were rendered. These cases only apply the rule that the want of a license in such cases is a matter of defense, to be pleaded and proved. (4 R. C. L. 45.) On this theory, plaintiff's counsel insist that as no such defense is mentioned in the affidavit of merits, it was waived. The statute does not require any pleading or affidavit of merits to be filed by the defendant in a fourth class case in the Municipal Court. If the Municipal Court has a rule on that subject, or if it has by rule adopted section 56 of the Practice Act, such rules must be shown by the bill of exceptions. They are not in this record, and we are not permitted to take judicial notice of their existence. (Sixty



[illegible]

v. Chicago City Ry. Co., 260 Ill. 478.)

Plaintiff's counsel also advances the novel theory that the statute does not require a real estate broker to have a license, but merely requires him to be registered, which, it is said, is not the same thing as a license. There is no merit in the contention. The registration certificate and card which the statute requires a real estate broker to obtain from the Department of Registration and Education, constitute a license without which the statute makes it unlawful to conduct a real estate brokerage business. A written license is nothing more than a certificate purporting to authorize the holder to do something which it would otherwise be unlawful to do.

It follows from what we have said that in our opinion the court erred in denying the motion of defendant to find the issues for the defendant upon the admitted facts, and for that reason the judgment of the Municipal Court will be reversed.

REVEREND.

Gridley, F. J., and Barnes, J., concur.





38390

209 - 28866

HOMB BANK AND TRUST COMPANY,  
a corporation,  
Appellant,

vs.

D. STERN and B. ROSENSTEIN,  
Appellees.

234 I.A. 630  
APPEAL FROM  
SUPERIOR COURT,  
COOK COUNTY.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

Plaintiff secured a judgment against defendants by confession, and later, on defendants' motion, the execution was stayed and defendants were given leave to plead. Their pleas alleged, in substance, that before the judgment was entered, plaintiff agreed with defendants and with other creditors of defendants to accept in full settlement of its claim twenty-five per cent of the amount of the same, and that in accordance with said agreement plaintiff was paid such twenty-five per cent, which it had accepted in full satisfaction and discharge thereof. To these pleas, plaintiff filed replications stating that the alleged settlement was made after the judgment was entered and was obtained upon the false and fraudulent representation that defendants' property was only sufficient to pay their creditors twenty-five per cent of their claims, and also "upon the understanding, agreement and condition" that all the creditors should receive not more than twenty-five per cent of their claims, whereas, in fact, some of such creditors received more than that percentage. Issue being joined on these replications, a trial was had before the court, resulting in an order vacating the judgment and entering judgment against the plaintiff for costs, from which order and judgment this appeal was perfected.





Defendants were partners in the retail shoe business in Chicago, and about April 1, 1922, found themselves in failing circumstances. One of their largest merchandise creditors, apparently with defendants' consent, placed a representative in defendants' place of business and had a firm of certified public accountants prepare a statement of assets and liabilities. About April 10th, a meeting of the creditors was called. The plaintiff then held a judgment note of defendants for \$2500, due April 24, 1922, and on receiving word of the creditors' meeting, sent an attorney to the meeting with instructions to "sit in and listen, and see what developed." Three or four creditors' meetings were held and plaintiff's attorney testified that he was present at all such meetings, listened to all that was said, promised nothing on behalf of the plaintiff, and reported all he heard to the plaintiff's president.

At the first meeting about half of the creditors were present or represented by counsel. One of the lawyers explained the situation and produced a copy of the accountant's report containing an estimate of the value of all the partnership assets and a list of partnership liabilities of the defendants. Three days later, a second meeting was held, which was attended by most of defendants' creditors. At this meeting, the advisability of bankruptcy proceedings was discussed, and it was tentatively decided by those present not to go into the federal courts if all the creditors would consent to "a trusteeship," or assignment for the benefit of creditors. A proposition was made by one Simon, who had formerly occupied the premises in which defendants' business was carried on, to buy defendants' stock of merchandise, at a price equal to twenty-five per cent of the claims of all creditors. The majority of the creditors favored the acceptance of this proposition, and one Thomsen was chosen as trustee and directed to visit each of the





creditors and endeavor to obtain their consent.

At the next meeting Thomson reported that he had visited some of the creditors and had written to the remainder, and that "all he had talked with" had agreed to accept the settlement proposed. Thereupon, apparently on the theory that those creditors who had not accepted would do so eventually, defendants made a general assignment of their partnership assets to Thomson, as trustee, and he gave a bill of sale to Simon, who paid the agreed price, which was placed in escrow in a bank for the benefit of all the creditors.

About the time of the last meeting, the defendant Rosenstein called at the plaintiffs' bank and asked Mr. Evans, the president, to join in the settlement. Evans said he thought defendants could pay more, and inquired about a piece of real estate owned by Rosenstein, of which the bank had knowledge. Rosenstein explained that this was incumbered and was of no value above the incumbrances. Evans testified that finally he told Rosenstein that "if everybody was willing to accept twenty-five cents on the dollar, we would too." Rosenstein testified that Evans concluded the conversation by saying: "All right, Mr. Rosenstein, we will accept the twenty-five per cent." Mr. Krause, plaintiff's vice-president, who was also present, testified: "My recollection is that Mr. Evans agreed to accept the twenty-five per cent settlement."

On May 4, 1922, plaintiff had judgment entered on its judgment note. Apparently, plaintiff's attorney had the execution on this judgment in his possession at the time of this last conversation, for he testified that Evans notified him about May 11, 1922, that plaintiff "had agreed to take twenty-five per cent," and directed him to return the execution to the court files. On that day, a cashier's voucher-check was sent to the plaintiff for an amount equal to one-fourth



[illegible]

of the amount due on the note. The voucher recited that it was to be charged to the account of "Stern-Rosenstein and Simon escrow," and was given "in full accord and satisfaction of all claims of the payee herein against Stern & Rosenstein." The voucher-check was paid to the plaintiff on May 15, 1922, after plaintiff had endorsed the same.

When the trustee transferred defendants' stock of shoes to Simon, Simon took possession of the store, and after putting in a quantity of his own goods, conducted a "sale" of the same. On May 17, 1922, while this sale was under way, and a crowd of buyers was present, two young lawyers appeared at the store, accompanied by a bailiff of the Municipal Court. They told Simon they had two judgments against defendants, amounting to about \$350, which they "wanted paid right away, or else they would close the store." Simon telephoned to Thomson, saying that he (Simon) "would have to pay them." Thomson replied: "I presume so." Thereupon, Simon gave his personal check for about \$360, the amount due on the judgments. He testified that he did so "because the sale was a success" and "in order not to have any trouble." One of these judgments was entered April 20, 1922, while the creditors' meetings were in progress, and Thomson testified that he told Simon that one or two creditors might object to the settlement. The record shows that neither of the two creditors whose claims were thus paid in full was present or represented by counsel at any of the creditors' meetings, and that neither of them ever signified his assent to the composition agreement. There is no evidence that any other of defendants' twenty-nine creditors was paid more than twenty-five per cent of his claim.

It is claimed by plaintiff's counsel that the settlement agreement was made after the judgment was entered, and therefore cannot be considered upon a motion to set aside





judgment. It is not clear from the record that the judgment was entered before the plaintiff agreed to the settlement; but if it was, that fact, in our opinion, is immaterial in this case, for the reason that if the plaintiff's claim was paid or satisfied after the judgment was entered, the court had jurisdiction, on a motion made for that purpose, to direct it to be satisfied of record (Harding v. Hawkins, 141 Ill. 572); and, regardless of the form of the final order, the result is practically the same.

The main question involved is whether, as contended by plaintiff's counsel, the composition agreement ceased to be binding on the plaintiff when two creditors, who were not parties to such agreement, were paid in full in the manner above stated. Plaintiff's counsel cite the case of Haffer v. Cahn, 73 Ill. 296, as authority for its position. In that case, a written composition agreement was signed by seven creditors and it subsequently turned out that by a secret arrangement made with one of the seven before the composition agreement was signed, that creditor had received security for the full amount of its claim; and the court held that such a secret arrangement was a fraud upon the other signers of the composition agreement and rendered their agreement void. No such facts appear in this case. Here the creditors who were paid in full were not parties to the composition agreement in any manner or form. There is no evidence of any secret agreement to pay them in full, and the evidence tends to prove that such payments were not made by or on behalf of defendants, but were exacted from Simon, the purchaser of the property, by the two non-assenting creditors, without any fraud or connivance on defendants' part to bring about that result. In Sandict v. Flawer, 106 Ill. 105, 110, and Gilfillan v. Farrington, 12 Ill. App. 101, 108, it is held





that it is not essential to the validity of a composition agreement that all creditors should join in the composition, unless there is a requirement to that effect in the agreement, and in the absence of such a requirement, the composition is binding upon all who agree to it. (See also 12 Corpus Juris, 261.)

Having alleged fraud, the burden was on the plaintiff to show the fraud charged. The trial court evidently found that plaintiff had not sustained that burden; and after a careful examination of the evidence, in the light of the arguments presented, we are unable to say that the finding of the trial court is manifestly against the weight of the evidence. Therefore the judgment is affirmed.

AFFIRMED.

Gridley, F. J., and Barnes, J., concur.



1. The first step in the process of identifying a problem is to define the problem. This involves identifying the symptoms of the problem and determining the scope of the problem. Once the problem has been defined, the next step is to identify the causes of the problem. This involves identifying the factors that are contributing to the problem and determining the underlying causes. Once the causes have been identified, the next step is to develop a plan of action. This involves identifying the steps that need to be taken to solve the problem and determining the resources that will be needed to implement the plan. Finally, the last step in the process is to implement the plan and monitor the results. This involves putting the plan into action and tracking the progress of the solution. Once the problem has been solved, the final step is to evaluate the results and determine if the solution was effective. This involves comparing the results of the solution to the original problem and determining if the problem has been resolved.

1. 15

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the Americas (CLA) in the United States. The Commission is therefore unable to determine whether the CLA is a legitimate organization or a subversive one.

... ..

84

234 - 28892

3840a

THE C. T. C. SAFE DEPOSIT COMPANY,  
a Corporation,

Appellee,

vs.

ALBERT SABATH,

Appellant.

234 I.A. 630

APPEAL FROM MUNICIPAL COURT

OF CHICAGO.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

Defendant, being sued for three months' rent of his office, located on the tenth floor of an office building in Chicago, filed a second amended affidavit of merits, stating that during such three months, the lessor remodelled the lower floors and the front of the building, and built an addition to the same, and that in the work of reconstruction the entrance to the building was "partially barricaded and hidden;" that the corridors "were littered with rubbish, refuse, cement and dirt," which was tracked into his office; that no running water was furnished during part of the time, and that for two months there was not sufficient heat in the building because the end of the corridors was broken open and exposed, and that "the rental value of said premises, as a result of the actions of the plaintiff aforementioned, was greatly decreased and rendered valueless to the defendant for the purpose for which they were occupied." The affidavit also states that for these reasons defendant vacated the leased premises one day before the expiration of his lease, and therefore claims he is not indebted to the plaintiff in any amount. Upon defendant's motion, the trial court struck this affidavit from the files and gave a judgment against defendant for the amount of the rent stipulated in the lease.

On this appeal, defendant claims his second amended affidavit states a good defense, upon the theory that when a lessee



005 11132

Small and medium sized

to 1000

Small and medium sized

to 1000

Small and medium sized

to 1000

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

Small and medium sized

is sued for rent he may recoup damages for any loss sustained by reason of any acts of the lessor which tend to deprive the lessee of the full benefit and enjoyment of the leased premises, or which tend to decrease the rental value of the same. In support of this theory counsel cites the case of Kentling v. Springer, 146 Ill. 481, and several Appellate court cases. In the Springer case it was held that where a lessor does an act amounting to a breach of his lease, the lessee, when sued for rent, may recoup any damages he has sustained by reason of such breach. That case, among others, is cited in the case of Helg v. Stafford, 284 Ill. 610, 617, in which the Supreme court states the rule to be that "in an action for rent under a lease, damages sustained by the tenant by reason of a breach of the contract of leasing on the part of the landlord, may be set up by the tenant by way of recoupment, and deducted from the sum he owes as rent." In the same case it is also said: "Any acts of trespass of the landlord or other acts which are unwarranted or negligently performed and occasion damage to the tenant in respect to the premises leased, may be recouped by the tenant in an action for rent. \*\*\*\* It is at all times to be understood, however, that no wrongful act of the landlord debars him from a recovery of the rent for the premises if the tenant continues to occupy the premises. In such a case the tenant can only recoup such damages as he sustained from the unlawful acts of the landlord which cause damage to the tenant in respect to the premises leased."

Testing the affidavit of merits by this rule, we find no allegation that there was any breach of the lease, and no facts alleged showing such a breach. The affidavit does not state that the work or remodeling, as done by the lessor, was wrongfully or negligently or unlawfully done, and the facts recited do not show that such was the fact. The affidavit shows that defendant continued to occupy the premises until the day before his lease ex-





pired, and no facts are alleged tending to prove there was an eviction or a partial eviction at any time. Moreover, it appears from the lease between the parties that the lessor expressly reserved the right to enter the demised premises for the purpose of making such changes and alterations in the building as it might deem necessary for the safety, preservation or improvement thereof. The affidavit presented no defense to the claim of the plaintiff and was properly stricken.

The judgment of the Municipal court is affirmed.

AFFIRMED.

Gridley, P. J., and Barnes, J., concur.



...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...  
...the ... of the ...

The ... of the ...

...the ... of the ...

3841a

260 - 28918

JENNIE CICCARELLO, administratrix  
of the estate of JAMES CICCARELLO,  
deceased,

Appellee,

vs.

LUIOFF WILSON,

Appellant.

234 I.A. 630

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

This suit was brought to recover damages for wrong-fully causing the death of plaintiff's intestate, who was run over by defendant's automobile. The suit was first brought against defendant, his son, Raymond H. Wilson, and one Frederick St. Clair. In the declaration as originally filed, defendant was alleged to be the owner of the automobile, while the other two defendants were alleged to be his agents in the operation and control of the same at the time of the accident. Later, three additional counts were filed, two of which charged careless operation and control of the automobile by all the defendants, and another charged willful and wanton misconduct in such operation and control. To all these counts the defendant filed only the plea of the general issue. Before the trial, Raymond H. Wilson, defendant's son, died, and the suit abated as to him, and during the trial the suit was dismissed as to St. Clair.

The record shows that during the examination of the jury, the attorney then representing the defendant, asked a question of a juror indicating that he expected to deny the operation and control of the car by defendant at the time of



Handwritten scribbles and marks at the top of the page.

082.1.122

Vertical line of text, possibly a date or reference number.

Vertical line of text on the right side of the page.

Main body of the document containing several paragraphs of text, mostly illegible due to blurriness.

Final lines of text at the bottom of the page.

the accident. Upon objection being made to the question, an argument ensued in which defendant's counsel insisted that the plea of not guilty put in issue the plaintiff's allegation of operation and control of the car; and when the court ruled against him, he at once asked leave to file a special plea denying such operation and control. The court said: "It is too late now. You would have leave if it was denying ownership; that is another question." Thereupon defendant's attorney asked leave to withdraw from the case to enable the defendant to get another lawyer, and the case went over until the next day, when another attorney was substituted. Before any evidence was heard, the new counsel for defendant asked leave to file a special plea, but the court said: "I have already ruled on that." After the evidence of three witnesses for the plaintiff had been heard, defendant's counsel presented, and asked leave to file, a formal special plea stating that defendant did not possess or operate the automobile in question at the time of the accident, and that the alleged driver of the same was not his agent or servant at that time. The court denied the motion.

Later, the defendant called his co-defendant St. Clair, who testified that he was riding in the automobile at the time of the accident and that Raymond Wilson, the son of defendant, was driving the car, and that there were two gross of whisk brooms in the car. Counsel for defendant then offered to prove by St. Clair that he was a manufacturer of whisk brooms and had borrowed the automobile from the defendant for the purpose of delivering the brooms that were then in the car; that Raymond Wilson, defendant's son, who worked as a machinist in his father's shop, agreed, at the request of St. Clair, to drive the car for him on his (St. Clair's) errand after hours on that day;



The first question is, what is the meaning of the word "responsibility"? It is a word which has been used in many different senses, and it is not always clear what is meant by it. In the case of the President, it is used in the sense of "accountability" or "liability". It means that the President is responsible for the actions of his administration, and that he must answer for them to the people. This is the sense in which the President is responsible for the actions of his administration, and it is the sense in which the President is responsible for the actions of his administration.

and that he and defendant's son were the only persons in the car at the time of the accident, and defendant's son was then driving the car on that errand, and not on any business of his father, the defendant. An objection to the offer was sustained by the court. The same offer was repeated when defendant was on the stand, with a like result.

At the close of the plaintiff's evidence, and at the close of all the evidence, defendant requested instructions directing the jury to find the defendant not guilty, which were refused. Defendant also offered an instruction stating, in effect, that if the jury find from the evidence that St. Clair had borrowed the automobile for business purposes of his own, and that the car was not being used at the time of the accident upon any business or any errand for the defendant, the jury should find defendant not guilty. This instruction was also refused. The record shows that the suit was not dismissed as to the defendant St. Clair until after these instructions had been tendered and refused.

Upon the authority of Clark v. Wisconsin Central Ry. Co., 261 Ill. 407, and Carlson v. Johnson, 263 Ill. 586, and, especially, for the reasons stated in the last two pages of the opinion in the latter case, we are of the opinion that the court erred in denying to the defendant leave to file the special plea denying defendant's operation and control of the automobile at the time of the accident. As this error necessitates a new trial, we refrain from discussing the evidence.

The judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

Grädley, F. J., and Barnes, J., concur.



The above information was obtained from the files of the FBI, New York Office, dated 10-18-67.

[illegible][illegible]

© 2004 Blackwell Publishing Ltd, *Journal of Internal Medicine* 255: 103–110

CONSTANTINE P. TRIANDAFIL,  
Appellant,  
  
vs.  
  
TOM HADZI and THEODORE HADZI,  
Doing Business as Hadzi Bros.,  
Appellees.

3842  
234 I.A. 630  
APPEAL FROM MUNICIPAL COURT  
OF CHICAGO.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

This is an appeal from an order vacating a judgment by confession. The judgment was on two notes signed by defendants and due in 1914, and the defense was that plaintiff's claim was barred by their discharge in bankruptcy in 1915.

Defendants produced certified copies of the order of discharge and of that part of the defendants' schedules purporting to show the plaintiff's claim. These certified copies showed that in February, 1915, one of the defendants filed an individual schedule, in which was listed the claim of "C. P. Triantafil, Insurance Exchange Building, Chicago, Illinois," for \$450 upon a note of the partnership of Hadzi Bros. made in Chicago in 1914. The evidence shows this was the correct address of the plaintiff at that time. In April, 1915, an amended schedule was filed in the same case, signed by both defendants, in which, according to the certified copy thereof produced by defendants, there was listed, in exactly the same manner and the same words, the claim above mentioned.

Plaintiff then produced a third certified copy, which was like the last in all respects but one, viz., that the first letter of the creditor's name is "S" instead of "C". The original amended schedule seems to have been produced in court and exhibited to the trial judge, but it is not contained in the record before us. The plaintiff testified that in November, 1932, he examined such original schedule and found "my name was listed as S. P. Triandafil;"





that he examined it again in February, 1923, and found that somebody had changed the letter "B," with a pencil, into a "C," whereupon he called the clerk's attention to that fact, and the clerk erased the "C" and then gave him the certified copy which he had.

Plaintiff also offered in evidence a certified copy of a notice of the first meeting of creditors, appended to which is a typewritten list of creditors, including the following: "S. P. Triantafil, Inc. Ex. Bldg., New York, 450.00." Attached to this list is what purports to be the affidavit of a clerk in the employ of the referee in bankruptcy, stating that he mailed notices "to all the creditors of said bankrupt as their names and addresses appear in the schedule of creditors filed herein," and that a list of the creditors "furnished by the attorney for said bankrupt" is attached as an exhibit. This purported affidavit, however, is not signed.

Upon this evidence the trial court held that plaintiff's claim ~~claim~~ was discharged by the bankruptcy proceedings. We can not say this conclusion was erroneous. The bankruptcy law does not require the bankrupt to send any notice to the creditors; that is the duty of the referee. The bankruptcy act requires the bankrupt to prepare and file a list of his creditors, showing their residences, if known, the amount due to each, the consideration, and how secured, if at all; and further provides that "a discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as \* \* \* have not been duly scheduled in time for proof and allowance." Under this section, if a debt is duly scheduled as provided by the act, the bankrupt is released therefrom by the order of discharge, whether the creditor receives notice of the bankruptcy proceedings or not. (Beck & Gregg Hardware Co., v. Crum, 127 Ga. 94.) The burden was on the plaintiff to show that his claim was not scheduled. (Van Norman v. Young, 226 Ill., 425.) In view of the fact that in the first schedule filed, the name and address of the



[illegible]

in 1941, the Government of the United States, through the War Relocation Authority, provided the Japanese American community with a number of services, including the provision of food, clothing, and shelter. The Government also provided the community with a number of educational and cultural programs. The community was also provided with a number of social and recreational activities. The Government's efforts to provide services to the community were a result of the community's isolation and the need to provide for their basic needs. The community's isolation was a result of the Government's policy of exclusion, which prevented the community from interacting with the rest of society. The community's basic needs were not met by the Government, and the community was forced to rely on its own resources. The Government's efforts to provide services to the community were a result of the community's isolation and the need to provide for their basic needs. The community's isolation was a result of the Government's policy of exclusion, which prevented the community from interacting with the rest of society. The community's basic needs were not met by the Government, and the community was forced to rely on its own resources.

THE UNIVERSITY OF CHICAGO  
 LIBRARY  
 540 EAST 58TH STREET  
 CHICAGO, ILL. 60637

plaintiff were given with substantial accuracy, that his debt was scheduled as one due from the partnership on a note, and that this schedule was followed by an amended schedule in exactly the same form, with the possible exception of one letter, we think it could not well be held that the preponderance of the evidence supports the plaintiff's theory that the debt was not "duly scheduled."

It is further claimed that there was evidence of a new promise. The court found that the weight of the evidence on this point was against the plaintiff, and we agree with that conclusion. The evidence as to the new promise is uncertain and contradictory, and is positively denied by the only defendant who is alleged to have made such a promise.

The judgment of the Municipal court is affirmed.

AFFIRMED.

Gridley, F. J., and Barnes, J., concur.





R. B. KURZON,  
Appellee,  
vs.  
M. ZERNES,  
Appellant.

3843a  
APPEAL FROM MUNICIPAL COURT  
OF CHICAGO.

234 I.A. 631

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

By this appeal the defendant seeks to have reversed a judgment rendered against him after a verdict by a jury for the agreed value of the plaintiff's services as an architect. Plaintiff claims that defendant requested him to submit a sketch for a one-story addition to defendant's building on Broadway, in Chicago; that plaintiff submitted the sketch, but defendant then said he had changed his mind and wanted plans and specifications for a two-story addition instead; that plaintiff prepared such plans and specifications; that defendant accepted the same and agreed to pay for them at the rate of two per cent on an estimated cost of \$15,000, the defendant to take the bids himself and superintend the work; that defendant solicited bids and told the plaintiff they were too high; that after waiting several months, during which defendant agreed to pay plaintiff's bill, defendant again changed his mind and wanted plans and specifications made according to the original sketch, which plaintiff proceeded to do, but before they were completed, defendant told the plaintiff he had concluded not to go ahead. There was evidence tending to support this theory. The defendant claimed that when the first sketch was made by the plaintiff, defendant asked the plaintiff what the proposed plan would cost; that plaintiff said it would cost not to exceed \$8,000, including his fees, whereupon defendant directed him to prepare plans and specifications upon that basis,





but that defendant was never able to get a bid of less than \$15,000 for the work so planned. There was some evidence tending to support a part of this theory.

The only ground that is argued by defendant's counsel for a reversal of the judgment is that the verdict is against the weight of the evidence. We have carefully examined the abstract, and portions of the record, containing the testimony of the witnesses, and after such examination, in the light of the arguments of counsel, we find ourselves unable to say that the verdict is manifestly against the weight of the evidence. The original verdict was for \$450, which may have been induced, in part at least, by defendant's affidavit of merits. However, the court required a remittitur of \$150, which accords with the theory that plaintiff made and furnished the plans for a two-story structure, and also with the theory that the plans for the one-story structure were never completed.

For the reasons stated, the judgment is affirmed.

AFFIRMED.

Gridley, P. J., and Barnes, J., concur.





297 - 26955

MANING WIRE COMPANY,  
a corporation,  
Appellee.

vs.

JULIUS BECKER, doing business  
as BECKER ELECTRIC WORKS,  
Appellant.

3844a  
234 I.A. C31

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

In this case, plaintiff sued to recover a balance of \$253.08 due upon an account for merchandise sold and delivered to defendant from August, 1921, to February, 1923. Defendant, in his amended affidavit of merits, does not deny that he bought the goods mentioned in the statement of claim, but says that the plaintiff is a foreign corporation doing business in Illinois without a license, and because of that fact defendant is not indebted to the plaintiff; also that on February 23, 1923, with plaintiff's consent, defendant returned certain goods, of the value of \$405.33, for which the plaintiff "has not shown credit in its statement of claim," and therefore alleges there is a balance due to the defendant of \$150.25. Upon a trial before the court without a jury, the plaintiff had judgment for the full amount of its claim with interest.

In defendant's brief, the question whether the plaintiff is a foreign corporation, not licensed in Illinois, is not discussed, and is therefore waived. The only remaining questions are, whether the court erred in finding against defendant on his claim of set-off, and in allowing interest



1891

1891

1891

1891

1891

1891

on plaintiff's claim.

Defendant's counsel are in error in claiming that the burden of proof was upon the plaintiff as to the claim of set-off. That was an affirmative defense, and upon the authority of Supreme Tent K. O. T. M. v. Stensland, 206 Ill. 124, 131, the defendant had the burden of proving such defense. The defendant testified that in addition to the credits for goods returned, as noted upon the plaintiff's statement of account, he had returned other goods of the value stated in his set-off. He claimed these were returned on the same day on which the plaintiff's statement of account shows that he was credited with nearly the same amount for the return of goods of exactly the same description. Defendant's testimony on this point was wholly uncorroborated. He produced no bill of lading or receipt for such goods, or other evidence than his unsupported statement that he had returned other goods to the plaintiff; and the plaintiff's president and general manager denied receiving any other goods than those for which defendant was given credit in the plaintiff's statement of account. The claim of set-off does not appear in the first affidavit of merits. We think the court was justified in finding against the defendant on his claim of set-off.

As to the item of \$10.54 for interest, it appears that monthly statements of account were rendered to the defendant, to which no objection was made; also that defendant paid to the plaintiff, during the month of April, 1923, \$200 on account of the balance shown by the last of such monthly statements. Defendant also testified that he did not learn that such statements did not give him the credit he now claims until after this suit was begun and a short time before



...and the ...

[illegible]

the trial. Under such circumstances, we think plaintiff was entitled to interest upon two grounds, viz.: that there was an account stated, and that there was unreasonable and vexatious delay in payment.

A question is raised regarding the admissibility of certain testimony, but as the case was tried by the court without a jury, it is presumed the court considered only the competent evidence.

The judgment of the Municipal Court is affirmed.

**AFFIRMED.**

Gridley, F. J., and Barnes, J., concur.



the field. Their work environment is very difficult  
and is often in the field with the people, who are  
very poor and have no money, and they have no money  
and constant hunger in the field.

A person is never happy in the field. It is  
very hard to live in the field, but it is not  
impossible. It is possible to live in the field  
and be happy. It is possible to live in the field  
and be happy.

The purpose of the field is to help the people.

THE FIELD

THE FIELD IS THE FIELD OF THE PEOPLE.

3845a

309 - 28967

MAX TRACKMAN et al., etc.,  
Appellees,

vs.

DOMINICK MARUBIO,  
Appellant.

234 I.A. 331

APPEAL FROM  
MUNICIPAL COURT  
OF CHICAGO.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

Plaintiffs recovered a judgment against the defendant upon a statement of claim alleging that defendant was hired to take a load of fish from a railroad station and deliver it to a cold storage plant, that he failed to deliver the load on the same day, and that when it was delivered, two days later, the fish were spoiled.

There is no substantial dispute as to the facts. Plaintiffs, desiring to have a load of fish hauled from the railroad station to a cold storage warehouse, caused one Linklater, a representative of the firm from whom they bought the fish, to engage defendant, who is a teamster, to haul it. For that purpose, Max Trackman, one of the plaintiffs, and Linklater went to Marubio's house on a Saturday afternoon, about four o'clock. Marubio was fixing his roof and Linklater climbed to the roof to talk to him. Max Trackman did not go up. Linklater told Marubio that he, Linklater, wanted some fish hauled from the depot to a designated warehouse. Marubio said he could get the fish out of the depot, but it was too late to get them into the warehouse, because he had only one man to help and it would take more than two hours, after he got to the depot, to load the fish. Linklater said that he "would take care of the warehouse and have it open," if Marubio would do



Page 1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

100.7.1.1.1

the hauling. Marubio said: "All right, then, I'll have the fish taken out of the depot and you are to see to the warehouse being kept open until the man gets there." Linklater came down from the reef and reported this conversation to Max Trackman, who called up the warehouse company and asked them to keep open until six o'clock. Marubio's driver drove to the railroad station and began loading the fish on his wagon. Plaintiffs saw him doing this, but did not speak to him. Neither defendant nor his driver knew that the fish belonged to the plaintiffs. The driver testified that he worked over two hours loading the fish; that when he got to the warehouse, it was closed; that he then drove to Marubio's place, and found it closed, and then he drove to Linklater's place and found that closed; and not knowing what else to do with his load, he left it in defendant's barn and delivered it on Monday morning, when the fish were spoiled.

The trial court held that it was defendant's duty "to notify his principal for instructions regarding the disposition of the fish," and that defendant "could not deliberately permit the fish to spoil, without giving the principal an opportunity to protect himself." This conclusion ignores the contract between the parties. Defendant agreed to have the fish taken from the depot and hauled to the warehouse. Plaintiffs agreed to see that the warehouse was kept open until the driver could get there. Both agreements were essential parts of the same contract. Defendant's driver hauled the fish to the warehouse, but when he arrived there, was prevented from delivering his load because of the failure of plaintiffs to keep their part of the contract. Clearly, plaintiffs were not entitled to notice of such non-delivery. They were chargeable with notice of that fact. They



the building, because when this man, who, till now, had  
 been out of the house and was now in the house,  
 and who was now in the house, and who was now in the house,

from the fact that the man who was now in the house,  
 and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,

and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,

and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,

and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,

and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,

and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,

and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,

and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,

and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,  
 and who was now in the house, and who was now in the house,

were told by Linklater that defendant, at four o'clock, had said, in effect, that he could not deliver the fish to the warehouse that day unless the warehouse could be kept open for that purpose, and that the driver could not get there for more than two hours after he got to the depot. Therefore, when plaintiffs arranged to have the warehouse kept open "until six o'clock," they knew that defendant's driver would not be there at that time; and, unless they were willing to have the driver keep the fish in his wagon over Sunday, it was their duty to make some other provision for the disposition of the load when it should arrive at the warehouse. The record shows that they did not perform that duty, nor did they make any inquiry as to what had become of the fish. True, the driver's act in leaving the fish in the wagon over Sunday was a stupid thing to do, but it probably would not have occurred if plaintiffs had performed their part of the contract, or had used reasonable care before Monday to ascertain what had become of their fish. The plaintiffs were guilty of the first breach of the contract. Where such is the fact, or where both parties are in default, there can be no recovery on the contract. (Harber Bros. Co. v. Moffatt Cycle Co., 151 Ill. 84; Chicago Washed Coal Co. v. Whitsett, 278 Ill. 623, 627.) Moreover, "a party who prevents a thing being done within the time stipulated will not be allowed to avail of the non-performance he has himself occasioned." (Lehmann v. Webster, 209 Ill. 264.)

For the reasons stated, the judgment is reversed with a finding of facts.

REVERSED WITH A FINDING OF FACTS.

Gridley, P. J., and Barnes, J., concurs.



...the ...  
...in effect, that he could not deliver the ...  
...that day unless the witnesses could be kept from  
...and that the witness would not give him the  
...than two hours after it was in the hands. Therefore,  
...plaintiff's strategy is based on the evidence that even  
...they knew that defendant's driver would  
...at no time at that time; and, second, they were willing to  
...the driver keep the time in his own hand. It was  
...only to make some other provision for the disposition of  
...him when it should arrive at the warehouse. The reason  
...was that they did not believe that they, nor did they want  
...my family as to what had become of the time. First, the  
...driver's car in leaving the time in the room was really not  
...which was in fact, but it was still left there because  
...plaintiff and defendant both said at the hearing, we had  
...and defendant gave before jury of evidence that had been  
...their lips. The plaintiff was going to the first house  
...of the contract. There was in the fact, as shown by the  
...in which, there was no testimony on the witness stand.  
...v. Defendant, No. 111, 1901; Plaintiff v. Defendant, No. 112, 1901;  
...v. Defendant, No. 113, 1901; Defendant, No. 114, 1901;  
...a thing being done which the law prohibited all but  
...is allowed in view of the non-performance in the contract.  
...Plaintiff v. Defendant, No. 115, 1901.  
...for the reasons stated, the judgment is reversed with  
...limited costs.

309 - 28967

#### FINDING OF FACTS.

The court finds as an ultimate fact that plaintiffs were guilty of the first breach of the contract mentioned in the plaintiffs' statement of claim, and that such breach was the proximate cause of their loss.





337 - 28995

*Sheet*  
THE YOUNGSTOWN STEEL & TUBE COMPANY  
et al.,

Appellants,

vs.

DEARBORN STEEL & IRON COMPANY et al.,  
(Defendants.)

EUGENE R. PIKE et al.,  
Appellees.

*2846a*  
234 I.A. 631  
APPEAL FROM CIRCUIT

COURT OF COOK COUNTY.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

Complainant, claiming that it is a creditor of the Dearborn Steel & Iron Company and the Dearborn Terminal Warehouse Company, corporations, filed its bill against them alleging that they had ceased doing business, leaving debts unpaid, and praying for the appointment of a receiver and a dissolution of said corporations. The bill also alleges that substantially the only asset of either of said corporations consists of a lease between the "Eugene R. Pike <sup>Estate</sup> Land Trust" and its trustees, of a warehouse building in Chicago, which lease, the bill charges, is of the value of about \$32,000; and said Land Trust and its trustees were made parties defendant. They answered, admitting the execution of the lease, but alleging that it was no longer in force and effect, but was terminated and cancelled before the filing of the bill of complaint.

The record shows that about nine months after the bill was filed, an order was entered which recites that on motion of the solicitors for said Land Trust and its trustees, the receiver and the complainant being present by counsel, "and it further appearing that the parties moving filed in this court their petition calling upon the receiver to elect whether he would take or reject the lease herein, and it appearing to the court that a reasonable time has elapsed within which the re-



1634.7.1.85

ceiver should have made such election, the court finds that the receiver has not elected to adopt said lease, and by his failure so to elect has lost his right to adopt said lease, and it is therefore ordered, adjudged and decreed that the parties moving be and they are hereby dismissed as parties defendant, and from this case." The petition referred to in said order has not been certified to this court as a part of the record, nor is there any certificate of evidence in the record.

Complainant's counsel urges that the order above recited must be reversed for the reason that it does not contain any finding of facts, and is not supported by any certificate of evidence. Counsel say that "a decretal order in chancery that is predicated on a conclusion of facts that are not recited in it will be reversed on appeal." In support of this proposition counsel cites a number of cases where that statement or its equivalent appears, but the rule so announced applies only where the decree or "decretal order" in question grants the relief prayed for in the bill. It does not apply to a decree or decretal order dismissing a bill, as such a decree or order is supported by the absence of evidence. (First National Bank v. Baker, 161 Ill., 281; Jackson v. Sackett, 146 Ill., 646.)

The parties who were dismissed by the order were not parties complainant, nor did they pray for any relief. It is possible that the petition referred to in the order dismissing them from the case may have contained a prayer for relief, in the sense that such petition may have asked the court to dismiss them from the case unless the receiver accepted or adopted the lease referred to in the bill and answer. But such a prayer - "to be hence dismissed," etc., - is part of almost every answer in chancery. The facts recited in the order, if they be called findings of fact, are



[illegible]

The following is a list of the names of the persons who have been appointed to the various committees of the Senate, and the names of the persons who have been appointed to the various committees of the House of Representatives, for the session of 1901-1902.

The position was very different in the case of the other two countries, Germany and Italy, and the result was that the position of the other two countries was very different from that of the first two.

sufficient to support an order dismissing the bill as to the lessors.

For the reasons stated, the order is affirmed.

ATTORNEYS.

Gridley, P. J., and Barnes, J., concur.





THESE ARE THE RESULTS OF THE INVESTIGATION

REPORT

THESE ARE THE RESULTS OF THE INVESTIGATION

REPORT

THESE ARE THE RESULTS OF THE INVESTIGATION

368 - 29026

PHILIP GATES,  
Appellee.

vs.

GEORGE MADER,  
Appellant.

3847a  
234 I.A. 331

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

By this appeal defendant seeks to reverse a judgment against him for personal injuries sustained by the plaintiff when he was struck by defendant's automobile, driven by defendant's adult son. To a declaration alleging negligence in the operation and control of his automobile by the defendant, his agents or servants, defendant filed special pleas alleging that at the time of the accident he did not drive, manage, operate or control the automobile in question, either personally or by his agent or servant. He did not deny that he owned the car.

No question is raised here as to the proof of negligence in the operation of the automobile or as to the exercise of due care on the part of the plaintiff. Defendant's counsel rely squarely on the special pleas filed and the undisputed evidence adduced upon the issue made by such pleas, and earnestly contend that as a matter of law this case is within the rule of non-liability announced in Arkin v. Page, 287 Ill. 420. Plaintiff's counsel, with equal confidence, insist that this case is controlled by the later decision of Graham v. Page, 300 Ill. 40. In both of these cases, it was held that the liability of a father for injuries caused by the negligent use of his automobile by his son or daughter rests upon the principle of agency, and not on the relationship of parent and child. Hence the question



1871

1871

1871

1871

1871

1871

1871

1871

1871

1871

1871

1871

1871

1871

1871

1871

1871

raised in this case is whether, upon the facts shown, the relation of principal and agent existed between the defendant and his son at the time of the accident.

The defendant is an osteopathic physician, with a family consisting of a wife, two sons and three daughters. The older son, Erwin, aged twenty-four years at the time of the accident, did not live with his parents. He lived at a hospital, where he was employed. Defendant kept an automobile, which was used by him to make professional calls, and, when opportunity presented, for pleasure. He testified that he sometimes took the family for a ride around the parks; that he always drove the car himself; that his wife could not drive the car, but that she had the privilege of taking the car out, if she had some one to drive it for her; that he had never forbidden his son Erwin to use the car and had never directed him to use it; and that he presumed Erwin could drive the car, but he had never seen him drive it up to the time of the accident.

Several days before the accident, the defendant's wife and two women friends had arranged to visit a friend in another part of the city of Chicago. They had planned to go by the elevated railroad and street cars, but on the morning of the day of the accident, defendant's wife telephoned to the other women that her son "would have a day off and would give them a treat and take them in the machine." Thereupon, Erwin took the automobile from defendant's garage and, with the defendant's wife and children, drove around to the houses of the other women who were to go in the machine. About noon, they were on their way to visit their friend when the accident happened. They were driving west on the north drive of Garfield Boulevard, and as they approached the intersection of State



There is this more to be said, that the same kind of  
 action of violence was also directed against the witnesses  
 at the time of the trial.

The defendant is an experienced physician, with a

family consisting of a wife, two sons and three daughters,

and about ten, twelve, and twenty-five years of age at the

time, and has lived with his family in the city of New York,

and in the country, for many years, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

York, and is a native of New York, and is a native of New

street, were directly behind another automobile driven by a man named Crane. The plaintiff, a tailor, about seventy years of age, walked out of a restaurant at the northeast corner of State street and Garfield boulevard and proceeded to cross the boulevard to his tailor shop near the southwest corner. The Crane car slowed down to let plaintiff pass ahead of it, and as he did so, defendant's car turned to the left of the Crane car and, moving rapidly, passed it and struck the plaintiff, inflicting a serious injury.

In Graham v. Page, supra, the cases cited in the earlier case of Arkin v. Page, supra, were re-examined, and the following conclusion was reached (p. 44): "The weight of authority supports the liability of the owner of a car which is kept for family use and pleasure where an injury is negligently caused by it while driven by one of his children by his permission, and the reasoning of these cases seems sound and more in harmony with the principles of justice. We agree with the Supreme Court of Tennessee that where a father provides his family with an automobile for their pleasure, comfort and entertainment, 'the dictates of natural justice should require that the owner should be responsible for its negligent operation, because only by doing so, as a general rule, can substantial justice be attained.'"

The facts in the Graham case, which the court said "clearly distinguished <sup>it</sup> from the Arkin case, are stated by the court as follows: "In this case, defendant's daughter was not merely driving the car for pleasure, but was using it on a family errand, - one of the purposes her father testified he kept the car for and one of the purposes he testified his daughter was authorized to drive it for. \* \* \* She was performing the business and duty of her father in the manner and with the means authorized by him."



The first of the three is the "General  
 and Particular" which is a general  
 statement of the facts of the case.  
 The second is the "Particulars" which  
 are the facts of the case as they  
 relate to the particular issue.  
 The third is the "Conclusion" which  
 is the result of the facts of the case.  
 The first of these is the "General  
 and Particular" which is a general  
 statement of the facts of the case.  
 The second is the "Particulars" which  
 are the facts of the case as they  
 relate to the particular issue.  
 The third is the "Conclusion" which  
 is the result of the facts of the case.

In the present case, the evidence shows that defendant's son was not driving the car for his own pleasure, but at his mother's request he was using it on a family errand, viz., to drive his mother, his brother and sisters, and friends of the family, to visit another family friend. It was for such purposes, with others, that the defendant kept the car, and he had expressly authorized his wife to use it in that way, if she could get a driver. She did not hire a chauffeur, as she might have done without exceeding her authority, but asked her son to drive for her. In driving the car under such circumstances, he was driving it with his father's permission and authority. He was not engaged in any purpose of his own, outside the scope of his duty as defendant's agent, but he was performing that duty in the manner and with the means authorized by defendant.

After giving full consideration to the arguments of defendant's counsel, we are unable to escape the conclusion that the case of Graham v. Page, supra, is of controlling authority in this case, and that, therefore, the defendant is liable for the consequences of his son's negligent driving of the automobile on the occasion in question.

Minor questions have been raised regarding the admissibility of certain evidence, as to alleged improper remarks of counsel, and as to two refused instructions. We have considered these questions and think there was no reversible error in the rulings of the court. The telephone conversation was admissible on the authority of Sedair v. Bank, 235 Ill. 572, and the refused instructions were substantially covered by other instructions that were given.

For the reasons stated, the judgment is affirmed.

AFFIRMED.

Oridley, P. J., and Barnes, J., concur.



In the present case, the evidence shows that the

defendant was not acting in the line of duty, and

as his conduct was not in the line of duty, it

is, in fact, his conduct, his conduct was not

the result of his conduct, but the result of his

conduct, and the result of his conduct, and the

conduct of the defendant was not in the line of

duty, and the result of his conduct, and the

conduct of the defendant was not in the line of

duty, and the result of his conduct, and the

conduct of the defendant was not in the line of

duty, and the result of his conduct, and the

conduct of the defendant was not in the line of

duty, and the result of his conduct, and the

conduct of the defendant was not in the line of

duty, and the result of his conduct, and the

conduct of the defendant was not in the line of

duty, and the result of his conduct, and the

conduct of the defendant was not in the line of

duty, and the result of his conduct, and the

conduct of the defendant was not in the line of

duty, and the result of his conduct, and the

conduct of the defendant was not in the line of

duty, and the result of his conduct, and the

conduct of the defendant was not in the line of

duty, and the result of his conduct, and the

conduct of the defendant was not in the line of

3848a

ROCKWELL MANUFACTURING COMPANY,  
Appellee.

vs.

BUNAY MANUFACTURING COMPANY (a corp.),  
formerly Sterling Talking Machine  
Company,  
Appellant.

234 I.A. 332

APPEAL FROM  
MUNICIPAL COURT  
OF CHICAGO.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

In this action, the plaintiff sued the defendant for the value of work and labor performed at the defendant's request. The defense was that the work was unskillfully done, and not done within the time stipulated in the contract. Upon a jury trial the plaintiff recovered the full amount of its claim. In this court, the defendant claims that the verdict and judgment are against the weight of the evidence, and that the judgment is for one dollar more than the amount claimed to be due.

The evidence on behalf of the plaintiff tends to prove that defendant employed it to do the wood turning for 500 tables which defendant was manufacturing; that defendant submitted to plaintiff a sample table leg and afterwards a sample table, and that plaintiff agreed to do the wood turning for 500 tables like the samples submitted from lumber to be furnished by the defendant; that no time was specified for the completion of the work; that plaintiff performed its part of the agreement, and within a reasonable time delivered to the defendant the completed parts for 500 tables like the samples submitted, which the defendant accepted without objection; that the reasonable value of the work done by the plaintiff is two dollars for each table, and that it was not until some



33

33

RECEIVED  
FEB 10 1948  
U.S. DEPT. OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL  
WASHINGTON, D.C.  
JAN 28 1948  
MEMORANDUM FOR THE RECORD  
SUBJECT: [Illegible]

1. [Illegible text]

2. [Illegible text]

3. [Illegible text]

time after the defendant had accepted the work that defendant first suggested the work was unskillfully done, or not done within the time agreed on.

The evidence on behalf of defendant tends to prove that plaintiff agreed to completely finish the work within ten days after it received the lumber from defendant; that the work was not done within that time and was not completed for about six weeks; that when part of the goods had been delivered, one of the officers of the plaintiff, in a telephone conversation with one of defendant's officers, said he would have the work done within ten days from that date or defendant need not pay for them; that there were certain defects in the work, as delivered, which required defendant to have part of it done over. In rebuttal the plaintiff denied that any specific time had been fixed for the completion of the work, and denied that it ever agreed to do the work for nothing if it was not finished within ten days.

The jury and the trial court heard the evidence upon these conflicting theories, and believed the plaintiff's theory to be supported by the greater weight of the evidence. After a careful examination of the evidence contained in the record, we are unable to say that their conclusion is manifestly wrong. In fact, it appears to us that the theory of the plaintiff is more reasonable and probable than that of the defendant. Considering all that has been said by defendant's counsel, the fact remains that notwithstanding the defendant's claim that plaintiff agreed to do the work within ten days, nevertheless, with full knowledge of the fact that only ten tables were completed in ten days, it received and retained without objection, the remaining four hundred and ninety tables, all



Thereafter the defendant had brought the same into evidence  
which suggested the same was immaterially shown, as the same  
within the same subject.

The evidence on behalf of defendant's cause is shown  
that defendant's cause is immaterially shown, as the same  
is shown by the evidence on defendant's cause, as the same

was shown on the same cause, as the same was shown on the  
same cause, as the same was shown on the same cause, as the same  
was shown on the same cause, as the same was shown on the same cause,

was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,

was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,

was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,

was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,

was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,

was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,

was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,  
was shown on the same cause, as the same was shown on the same cause,

of which were made more than ten days and the last of which were made six weeks after the contract was made. By so doing, defendant waived the time limit, if there was any. It might perhaps have recouped its damages, if any, caused by careless workmanship; but there was no evidence giving the jury any basis for such an allowance, and they would not be permitted to guess what amount, if any, ought to be allowed.

As to the amount of the judgment, it is true that the amount recovered is one dollar more than the amount claimed. This error, however, can be cured by a remittitur. If, therefore, within ten days from the date this opinion is filed, the plaintiff will file in the clerk's office a remittitur of one dollar, the judgment for the remainder, \$999, will be affirmed at appellant's costs; otherwise the judgment will be reversed and the cause remanded for that error alone.

AFFIRMED ON REMITTITUR.

Gridley, F. J., and Barnes, J., concur.



[illegible]

more than 100 years after the original work.

1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 26

It is also possible that the observed differences in the response of the two groups to the different stimuli are due to differences in the underlying neural mechanisms. For example, the response to the high-frequency stimulus may be mediated by a different set of neurons than the response to the low-frequency stimulus. This would be consistent with the findings of other studies that have shown that different frequencies of electrical stimulation can activate different populations of neurons in the brain (e.g., [10, 11]).

by various witnesses, but there was no witness (b)(7)(C) (b)(7)(D)

For more information, contact us at 1-800-441-1111

On October 10, 1964, the following information was received from the Bureau of the Census:

1000 4000 42 71 4700000000 000 00 0000000000 000 00 00

THE UNIVERSITY OF CHICAGO

... ..

[illegible]

3849a

383 - 29041

H. C. SAAL COMPANY,  
a corporation,  
Appellee,

vs.

LITE PRODUCTS CORPORATION,  
Appellant.

234 I.A. 632  
APPEAL FROM CIRCUIT COURT,  
COOK COUNTY.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

In this case the Circuit Court denied the motion of defendant to vacate a judgment by confession and for leave to plead to the merits. On this appeal the only question raised by defendant's counsel is whether the court erred in holding that the affidavit of plaintiff's president filed in support of said motion does not state a meritorious defense.

The following statement will sufficiently indicate the purport of such affidavit. Defendant is engaged in the sale of automobile accessories, principally in the sale and distribution of metal rear curtain window frames for automobile tops. Having no facilities for the manufacture of the dies and castings required for the making of such window frames, it contracted with the plaintiff in 1921 for the manufacture of the same to an amount in excess of \$10,000; and for nearly a year thereafter, plaintiff did all of defendant's work of that character. Prior to August 4, 1922, a dispute arose between the parties by reason of the fact that the die mold made by the plaintiff had "developed defects, due either to improper methods of manufacture or poor materials, as a result of which it was impossible to obtain salable castings from the said die mold." Finally a settlement was reached, in which defendant gave its check to the plaintiff for the sum





of \$2,000, and its fifteen promissory notes, aggregating \$17,284.61, payable monthly in succession on the 21st of each month beginning September 21, 1922. The check and notes were transmitted to the plaintiff in a letter, dated August 4, 1922, in which defendant said: "It is our understanding that the above constitutes payment in full of all of your accounts against our corporation to date for merchandise delivered to our plant, as well as merchandise still on your premises, as listed on the attached schedule, together with all die charges, and will give our company a clean sheet in so far as all obligations heretofore incurred may be concerned." The "attached schedule" is not shown in the bill of exceptions. The letter then states that "as explained to you in our conversation, we are being pressed by good customers to immediate delivery of our number 51 6 x 24 rear curtain frames, for which reason we desire you to deliver at once at least 330 outside halves of this frame, and we also suggest that you cast as soon as possible about 500 additional complete frames of this size, in order to fill our requirements while the new die, as per our understanding, is being made by you, without cost to us;" that "it is our further understanding that you will deliver to our plant the merchandise specified in the attached list upon our requisition, and will also match up incomplete frames upon our orders at any reasonable time, at the prices per frame specified in your original proposal," and "will accept for credit such frames, if any, as may be found upon careful inspection to be defective and unmerchantable;" that plaintiff "will continue as heretofore" to maintain defendant's dies and tools in good condition while in plaintiff's possession and "will continue to furnish us as and when ordered" additional frames "cast therefrom" on the customary trade terms, with a credit on open account up to \$2000. The letter also inclosed an order for





additional merchandise.

To this letter plaintiff replied that it would "go ahead and get you some 6 x 24 frames as soon as possible;" that its understanding "regarding the upkeep of your tools" was that plaintiff should keep the tools in good condition "until your order is completed;" that "it is our understanding" that plaintiff's account must not go over \$2000 and must be cleared up every thirty days; that plaintiff would match up the odd frames when defendant is ready to take them, which should be "within the next 60 days;" and concluded as follows: "We believe this answers your letter of the 24th and is our understanding of what we are to do for your company."

It is further alleged in the affidavit that "pursuant to the terms of said settlement agreement," plaintiff proceeded to make a new die mold, but that defendant "was unable to receive from the plaintiff any frames which were properly manufactured or cast;" that of the frames it did receive, the "greater number" were in unsalable condition; that defendant then requested plaintiff to deliver "the said die casting" to the defendant, which request was ignored; that defendant finally secured possession of the "said 6 x 24 die" by starting a replevin suit, "which is now pending;" that it delivered the die to "two leading and reputable die casting companies," who "advised" the defendant that it was "almost impossible" to have proper castings made from that die; that defendant then had a new die mold made, for which it "is obliged" to pay \$1108, and ordered 5000 frames from other parties, at a cost of nearly twenty cents a frame in excess of the price at which plaintiff had agreed to furnish the same; that "since the settlement agreement of August 4, 1922," another die mold developed defects on account of improper manufacture and poor material, with like



... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

results, and that since the maturity of the note upon which judgment was confessed "an inspection of the frames and castings delivered to the defendant by the plaintiff in pursuance of the terms of said letter of August 4, disclosed that over 4000 castings, valued at about \$3500, were defective and not fit to be used by the defendant for the purpose for which they are intended." The affidavit concludes by asserting that there has been a total failure of consideration for the note sued on and all the remaining unpaid notes.

From this affidavit, it appears that no written agreement was made at the time the judgment notes were given, and the terms of the oral agreement that was then made can only be gathered from the two letters quoted in the affidavit. From them, it is clear enough that an oral settlement of plaintiff's accounts against the defendant was made on August 3, 1922, and that the note on which judgment was entered was one of a series of notes which, with defendant's check for \$2,000, were given to plaintiff the next day and accepted by it in full payment of all such accounts to that date. The consideration for such notes was therefore money due upon a settlement of such accounts; and there is nothing in the affidavit to show that such consideration has failed, wholly or partially. No facts are stated which, if true, would tend to show any defenses to any of such notes, except, possibly, by way of set-off or counter claim for damages arising out of matters which are alleged to have occurred subsequent to the settlement. If defendant has any valid claim for damages arising out of such matters, no reason is perceived why it may not maintain a separate action therefor, nor why it should be permitted to introduce such action in this case. Ordinarily a judgment by confession will not be opened up merely to enable a defendant to maintain a cross-action. (Reehler v.





Glenn, 169 Ill. App. 537.) A motion to vacate a judgment entered by confession is addressed to the sound discretion of the court. (Blake v. State Bank of Freeport, 178 Ill.

182.) We are of the opinion there was no abuse of such discretion when the trial court refused to vacate the judgment on the showing made in this case.

AFFIRMED.

Gridley, P. J., and Barnes, J., concur.





RUSSELL BILLMAN,  
Appellee.

vs.

H. C. WOOD,  
Appellant.3830a  
234 I.A. 632

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

The action in this case was for money loaned. The defense was payment. At the close of all the evidence the court directed a verdict in favor of the plaintiff, thereby holding, in effect, that there was no evidence tending to prove payment. The principal question raised on this appeal is whether the court erred in this respect.

Plaintiff is the son of defendant's sister. He is a clerk, and in July, 1919, had accumulated a thousand dollars. His uncle, the defendant, who gave his occupation as "educational director" of a national salesman's training association, testified that he then had an account with a broker through whom he was "trading" on the Chicago Board of Trade, that he borrowed plaintiff's \$1,000, gave plaintiff his promissory note for the same, due in one year at six per cent, and endorsed over to his broker plaintiff's check for that amount.

Just before defendant's note fell due plaintiff called at defendant's office. There he met the defendant and one Walkinshaw, who appears to have been associated or connected in some way with defendant in his trades. As the result of this meeting, plaintiff surrendered defendant's note to defendant upon an understanding which plaintiff described as follows:





"He had this thousand up with the broker, and \* \* suggested this money remain on the books of the brokerage firm and if I at any time wanted to do any dealings, as he had done, or this other man, through this firm, I could do so with the understanding that this thousand was to remain there as a sort of a security, and that I was not to reveal any information they would give me." Plaintiff testified that he never did make any "dealings," but soon after, called on defendant a second time and said he was not satisfied to have the money remain as it was without security of any kind, to which defendant replied that "he wasn't just satisfied with the dealings of Walkinshaw, but, anyway, the loan was made in good faith and would be made right;" that thereafter, he called the defendant by telephone many times, and left his telephone number to be called by defendant, but never received any reply to his messages.

Defendant testified to the following effect: that when the note fell due he talked with the plaintiff regarding payment and that plaintiff then entered into a written agreement, signed by plaintiff, defendant, and Walkinshaw, stating that "in consideration of one thousand dollars paid to W. C. Wood and J. L. Walkinshaw," said Wood and Walkinshaw agree "to reveal to G. W. Dillman sufficient information regarding the methods of trading on the Chicago Board of Trade to allow him to make trades based on such information," that plaintiff agrees "to trade conservatively, and to trade when he is so instructed, excepting that he may sell a buy given him when he may desire," and "not to reveal any information he may get" to any person except as directed by Wood and Walkinshaw, under penalty of forfeiting his right to receive any more information, and to pay Wood and Walkinshaw "twenty-five per cent of his net profits." Defendant



[illegible]

testified further that the information which he thus agreed to "reveal" to the plaintiff was "gathered from Babson's reports, the law of supply and demand, and other market conditions, as reported in the newspapers and magazines," that "within reasonable bounds anyone who studies the market and the law of supply and demand can tell how the market is going to vary," and that he and Walkinshaw made many small trades to test the accuracy of the reports of Babson and other financial experts and "to determine if we were capable of properly interpreting conditions." He denied that he had told the plaintiff, after this agreement was signed, that he would repay the loan. He testified that he had not seen the plaintiff for nearly two years before the trial, but claimed that he repeatedly called the plaintiff by telephone, telling him "conditions look favorable this morning, one way or the other, to trade," or that "it looked as if this was a good time for him to buy some wheat, or corn, or whatever the market was showing at that time."

An examination of the record discloses that plaintiff's counsel, throughout the trial, endeavored to make it appear from the foregoing testimony, that the agreement under which the plaintiff surrendered his note to the defendant was, in effect, a gambling contract such as is prohibited by section 130 of the Criminal Code; and, as there is no other evidence of payment except the agreement above stated, it seems that the trial judge took that view in directing a verdict for the plaintiff. In this we think the court erred. There was evidence tending to prove that plaintiff surrendered his note to defendant in return for the written promise of defendant and Walkinshaw to "reveal" to him "sufficient information," as to the "methods of trading" on the Chicago Board of Trade, to enable him "to make trades." Intrinsically there is nothing illegal in such an





agreement. If it was intended by the parties to said agreement that defendant should teach the plaintiff to trade in such a way that his trades would be in contravention of section 130 of the Criminal Code, then the agreement would be void, in which case, it would be no evidence of payment of the loan. But there is no proof of that character in the record; and it is not here contended that the agreement is void for any other reason. As it stands, therefore, the evidence of either party, standing alone, would justify a verdict in his favor. Therefore, under the familiar rule applicable to cases in which a verdict has been directed, it was error for the court to itself decide the disputed question of fact. While it is proper to direct a verdict in favor of the plaintiff if his proved case is not contradicted, or if the defense alleged fails for want of proof (Marshall v. Grease Clothing Co., 184 Ill. 421), yet, the court should not instruct the jury to find in favor of either party unless there is no evidence tending to support the claim of the party against whom the instruction is directed. (Balsewicz v. C. E. & Q. R. R. Co., 240 Ill. 238, 244.)

The judgment of the Municipal Court is reversed and the cause remanded.

REVERSED AND REMANDED.

Gridley, F. J., and Barnes, J., concur.





NATIONAL LEAD COMPANY,  
a corporation,  
Appellee.

vs.

COLUMBIA CASUALTY COMPANY,  
Appellant.

3851a  
234 I.A. 632

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

This appeal is from a judgment in favor of the plaintiff, based upon its verified statement of claim, entered after defendant's affidavit of merits had been stricken from the files.

The amended statement of claim alleges that plaintiff delivered to the Chicago & Milwaukee Steamship Company, a common carrier, certain merchandise to be carried and delivered to designated consignees at Milwaukee, Wisconsin, and that in consideration thereof defendant issued to plaintiff its indemnity bond, in which defendant agreed to "make good" to the plaintiff all damages for loss of such merchandise for which the steamship company "ultimately may be legally liable;" that the steamship company failed to deliver such merchandise and "is legally liable" for the loss of the same to the amount of \$1,186.77; that the steamship company is now insolvent and its assets are in the hands of a receiver appointed by the Circuit Court of Cook County; that plaintiff filed its petition in the receivership proceedings asking for the allowance of its claim, and on the same day it filed such petition, a decree was entered by the Circuit Court finding that said steamship company "was legally liable" to the plaintiff for the sum last



1992-1993

1952 1953 1954 1955

[illegible]

mentioned, and ordering the receiver to pay the same in due course of administration; and that plaintiff has demanded payment of the receiver, which has been refused. By an order entered before the affidavit of merits was filed, defendant was "excused from answering" the allegations of the plaintiff's statement of claim as to the contents of the shipments of merchandise therein referred to, as to the alleged demand for payment and refusal of the same, and as to the value of the merchandise and the amount of plaintiff's loss.

To the amended statement of claim, defendant filed an affidavit of merits, in which all the facts alleged in such statement of claim are admitted, except such statements as it was excused from answering, as above stated, and except the legal conclusions therein alleged. The affidavit then avers that defendant had no notice or knowledge of the receivership proceedings mentioned in the statement of claim, or of the filing of the petition therein referred to, and was not a party thereto and is not bound thereby; also, that the steamship company accepted the shipments of merchandise from the plaintiff and agreed to transport the same subject to the conditions stated in the bill of lading which was issued by such steamship company and accepted by the plaintiff for such shipment, one of which conditions provided that the carrier should not be liable for any loss caused by the act of God, and that the loss of said merchandise was caused by the act of God, and therefore the steamship company is not legally liable for the same. This affidavit was stricken, on plaintiff's motion.

The real question presented by plaintiff's motion to strike, is whether defendant, who was the surety in the indemnity bond, was bound by the order of the Circuit Court allowing the



...and ... the ... of the ...  
... of the ... which has been ...  
... the ... of the ...  
... the ... of the ...  
... the ... of the ...  
... the ... of the ...

... the ... of the ...  
... the ... of the ...  
... the ... of the ...  
... the ... of the ...  
... the ... of the ...  
... the ... of the ...

... the ... of the ...  
... the ... of the ...  
... the ... of the ...  
... the ... of the ...  
... the ... of the ...  
... the ... of the ...

... the ... of the ...  
... the ... of the ...  
... the ... of the ...

plaintiff's claim, to which defendant was not a party and of which it had no notice.

In Grommes v. St. Paul Trust Co., 147 Ill. 634, it is said that the decisions of the courts are not uniform as to the question for what purpose and to what extent a judgment against the principal may be introduced in evidence against the surety, but that the general tendency of the decisions is in favor of the position that, except in cases where the surety has been made privy to the suit against the principal by notice and an opportunity to defend it, and except where by the terms of the contract the surety is obligated to be responsible for the result of a court proceeding, "the judgment against the principal is not conclusive against the surety, but can only be introduced against him as evidence of its own existence, and not as evidence of any of the facts upon which its recovery rests."

In Lesczanskis v. Downs, 286 Ill. 281, it was held that a judgment recovered by default against the principal in a contractor's bond is not binding on the sureties, or admissible in a subsequent suit against them on the bond, where there is nothing to indicate that they had notice of the suit or were given an opportunity to defend. In that case the court cites the Grommes case, supra, and other authorities, and the following quotation from Brandt on Suretyship & Guaranty is quoted with approval: "Although there is a conflict of authority on the subject, it seems to be the better opinion that, except in cases where, upon the fair construction of the contract, the surety may be held to have undertaken to be responsible for the result of a suit, or when he is made privy to the suit by notice and the opportunity being given him to defend it, a judgment against the principal alone is, as a general rule, evidence against the surety of the fact of its recovery only, and not of



10-10-68

THE UNIVERSITY OF CHICAGO

[illegible]

100-443887-100

[illegible]

any fact which it was necessary to find in order to recover such judgment." The court also quotes a similar statement from Baylies on Sureties & Guarantors, that except in the cases above mentioned, "a judgment against the principal is proof against the surety only of the fact of its recovery, and not that the facts in pais, against which the surety agreed to indemnify, were established in the litigation."

Under these authorities it is clear that unless upon a fair construction of the terms of the bond in question the defendant may be held to have undertaken to be responsible for the result of the hearing (if any was had) upon the petition in the receivership proceedings for the allowance of the plaintiff's claim, without any notice to the defendant or opportunity given it to defend against such allowance, then defendant is not bound by such allowance, and the fact that plaintiff's claim was so allowed does not relieve the plaintiff from the necessity of proving that its loss was not occasioned as alleged in the affidavit of merits. Plaintiff's counsel accepts this conclusion, and claims that the terms of the bond require the defendant to pay the amount of any judgment obtained by the plaintiff against the steamship company for damages for the loss of the merchandise delivered to it by the plaintiff. We find no language in the bond which, in our opinion, is fairly susceptible of that construction. By the terms of the bond, defendant undertook to make good to the plaintiff any loss plaintiff might sustain for which the carrier might "ultimately be legally liable." This means any loss sustained as the result or consequence of any failure on the carrier's part to safely carry the plaintiff's goods. It does not say, or mean, that defendant agrees to pay any amount that a court might allow as a claim against the receiver of such carrier upon an ex parte petition, without any notice to defendant. Under the decisions, if notice of the filing of plaintiff's petition for





such allowance had been given to defendant, and defendant had been given an opportunity of defending against such claim, then defendant might be bound by such allowance. The affidavit of merits states that defendant had no notice or knowledge of the same and the motion to strike impliedly admits this statement to be true. The words "ultimately liable" and "legally liable," as used in the bond, do not add anything to the obligation of the defendant, but they require that such proofs of loss must be furnished as would show that the steamship company was "ultimately legally liable" for the loss.

For the reasons stated, the judgment of the Municipal Court and the order striking the affidavit of merits from the files will be reversed and the cause remanded for further proceedings not inconsistent with the views herein expressed.

REVERSED AND REMANDED.

Gridley, P. J., and Barnes, J., concur.



[illegible]

THE NEW YORK PUBLIC LIBRARY, ASTOR LENOX AND TILDEN FOUNDATIONS, 455 FIFTH AVENUE, NEW YORK 17, N. Y.

1. *Chrysomelidae* 1000

29187

PHILIP LUZZO and  
JOSEPHINE LUZZO,  
Appellees,

vs.

MARY TORINO et al., on  
appeal of JAMES H. HOOPER,  
Appellant.

3852a  
234 I.A. 632

INTERLOCUTORY

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

MR. JUSTICE FITCH DELIVERED THE OPINION OF THE COURT.

This is an appeal from an interlocutory order appointing a receiver in a suit in equity for partition. The property involved is a three-story brick building in Chicago, consisting of a store, two flats above, and a garage in the rear.

The bill is filed by Philip Luzzo and his wife, who claim that they, together with Nicolo Torino and his wife, bought the property in 1921, subject to a mortgage of \$4500; that Nicolo Torino died soon after, leaving a widow and two children, who are made defendants. The occupying tenants and three other persons, one of whom is the appellant James H. Hooper, are also made defendants, as persons claiming to have some interest in the property, although the bill says that in fact they have no interest therein. The bill is not sworn to.

After service of process was had upon the tenants and Hooper, but before the time for them to answer had arrived, on motion of the complainants, the Chicago Title and Trust Company was appointed receiver of the premises, with authority to collect the rents. The order appointing the receiver also states that upon due notice and full hearing, the court is of the opinion that a receiver ought to be appointed without



380 12102

100

requiring any of the parties to give bond. The defendant James H. Hooper excepted to this order and was given leave to present a certificate of evidence within ten days, which he did.

The certificate of evidence shows that upon the hearing of the motion to appoint the receiver, the court heard the affidavit of one Saccoccio, who deposed that he is the agent of the complainants and the Terinos, and has had charge of the premises and collected the rents; that the aggregate rentals are \$175 a month; that the store on the first floor is occupied by the defendant Edwards, who went into possession thereof as a tenant of the complainants and the Terinos; that Edwards has refused to pay rent to the affiant, as agent for complainants and the Terinos, and claims to have paid the rent to the defendant Hooper, who claims some interest in the property in a proceeding brought in the Municipal Court of Chicago. The certificate of evidence also shows that the defendant Hooper was present in court upon said hearing and admitted that he had collected rent from Edwards, "and that he was and would continue to commence suit in the Municipal Court for what he considered his part or share of the rent." Whereupon the order appealed from was entered.

The defendant Hooper insists that a receiver cannot be appointed upon a bill which is not sworn to. This is true only where such appointment is sought, or is made, solely upon facts stated in an unverified bill, without any proof of such facts, by affidavit or otherwise. Such is not this case. Here the receiver was appointed on motion of the complainants supported by affidavit, and upon the admissions of Hooper made in open court; and the evidence upon which the court acted was preserved by the certificate of evidence. We think the appointment was justified by the evidence so taken and preserved. The



...the following...

215

The author(s) of articles have the right to request the publisher to make corrections to the text.

and 10-14 June 1977, collected and analyzed at Nelson and De Wit

To receive any of the following information, contact: 1-800-455-1776

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED EXCEPT WHERE SHOWN OTHERWISE

© 2000 Blackwell Science Ltd *Journal of Internal Medicine* 247: 399–405

1. The first of these is the fact that the system is not a simple one, and that the results are not always the same.

THE UNIVERSITY OF CHICAGO, CHICAGO, ILL.

est souvent une question de bon équilibre entre la forme

\_\_\_\_\_

\_\_\_\_\_

and therefore, the claims were rejected in a final

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923. Organizations in the USA who are also registered with the Copyright Clearance Center may therefore copy material (beyond the limits permitted by sections 107 and 108 of US copyright law) subject to payment to C.C.C. of the per copy fee of \$05.00. This consent does not extend to multiple copying for promotional or commercial purposes. ISI Tear Sheet Service, 3501 Market Street, Philadelphia, PA 19104, USA, is authorized to supply single copies of separate articles for private use only. Organizations authorized by the Copyright Licensing Agency may also copy material subject to the usual conditions. For all other use, permission should be sought from Cambridge or the Cambridge University Press. This journal is registered with the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923. Organizations in the USA who are also registered with the Copyright Clearance Center may therefore copy material (beyond the limits permitted by sections 107 and 108 of US copyright law) subject to payment to C.C.C. of the per copy fee of \$05.00. This consent does not extend to multiple copying for promotional or commercial purposes. ISI Tear Sheet Service, 3501 Market Street, Philadelphia, PA 19104, USA, is authorized to supply single copies of separate articles for private use only. Organizations authorized by the Copyright Licensing Agency may also copy material subject to the usual conditions. For all other use, permission should be sought from Cambridge or the Cambridge University Press. This journal is registered with the Copyright Clearance Center, Inc., 222 Rosewood Drive, Danvers, MA 01923. Organizations in the USA who are also registered with the Copyright Clearance Center may therefore copy material (beyond the limits permitted by sections 107 and 108 of US copyright law) subject to payment to C.C.C. of the per copy fee of \$05.00. This consent does not extend to multiple copying for promotional or commercial purposes. ISI Tear Sheet Service, 3501 Market Street, Philadelphia, PA 19104, USA, is authorized to supply single copies of separate articles for private use only. Organizations authorized by the Copyright Licensing Agency may also copy material subject to the usual conditions. For all other use, permission should be sought from Cambridge or the Cambridge University Press.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

THE UNIVERSITY OF CHICAGO LIBRARY

... ..

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

\* 0401234730 70473 40007 -

1990 1991 1992 1993 1994 1995 1996 1997 1998 1999 2000 2001 2002 2003 2004 2005 2006 2007 2008 2009 2010 2011 2012 2013 2014 2015 2016 2017 2018 2019 2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030 2031 2032 2033 2034 2035 2036 2037 2038 2039 2040 2041 2042 2043 2044 2045 2046 2047 2048 2049 2050 2051 2052 2053 2054 2055 2056 2057 2058 2059 2060 2061 2062 2063 2064 2065 2066 2067 2068 2069 2070 2071 2072 2073 2074 2075 2076 2077 2078 2079 2080 2081 2082 2083 2084 2085 2086 2087 2088 2089 2090 2091 2092 2093 2094 2095 2096 2097 2098 2099 2100 2101 2102 2103 2104 2105 2106 2107 2108 2109 2110 2111 2112 2113 2114 2115 2116 2117 2118 2119 2120 2121 2122 2123 2124 2125 2126 2127 2128 2129 2130 2131 2132 2133 2134 2135 2136 2137 2138 2139 2140 2141 2142 2143 2144 2145 2146 2147 2148 2149 2150 2151 2152 2153 2154 2155 2156 2157 2158 2159 2160 2161 2162 2163 2164 2165 2166 2167 2168 2169 2170 2171 2172 2173 2174 2175 2176 2177 2178 2179 2180 2181 2182 2183 2184 2185 2186 2187 2188 2189 2190 2191 2192 2193 2194 2195 2196 2197 2198 2199 2200 2201 2202 2203 2204 2205 2206 2207 2208 2209 2210 2211 2212 2213 2214 2215 2216 2217 2218 2219 2220 2221 2222 2223 2224 2225 2226 2227 2228 2229 2230 2231 2232 2233 2234 2235 2236 2237 2238 2239 2240 2241 2242 2243 2244 2245 2246 2247 2248 2249 2250 2251 2252 2253 2254 2255 2256 2257 2258 2259 2260 2261 2262 2263 2264 2265 2266 2267 2268 2269 2270 2271 2272 2273 2274 2275 2276 2277 2278 2279 2280 2281 2282 2283 2284 2285 2286 2287 2288 2289 2290 2291 2292 2293 2294 2295 2296 2297 2298 2299 2300 2301 2302 2303 2304 2305 2306 2307 2308 2309 2310 2311 2312 2313 2314 2315 2316 2317 2318 2319 2320 2321 2322 2323 2324 2325 2326 2327 2328 2329 2330 2331 2332 2333 2334 2335 2336 2337 2338 2339 2340 2341 2342 2343 2344 2345 2346 2347 2348 2349 2350 2351 2352 2353 2354 2355 2356 2357 2358 2359 2360 2361 2362 2363 2364 2365 2366 2367 2368 2369 2370 2371 2372 2373 2374 2375 2376 2377 2378 2379 2380 2381 2382 2383 2384 2385 2386 2387 2388 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 2403 2404 2405 2406 2407 2408 2409 2410 2411 2412 2413 2414 2415 2416 2417 2418 2419 2420 2421 2422 2423 2424 2425 2426 2427 2428 2429 2430 2431 2432 2433 2434 2435 2436 2437 2438 2439 2440 2441 2442 2443 2444 2445 2446 2447 2448 2449 2450 2451 2452 2453 2454 2455 2456 2457 2458 2459 2460 2461 2462 2463 2464 2465 2466 2467 2468 2469 2470 2471 2472 2473 2474 2475 2476 2477 2478 2479 2480 2481 2482 2483 2484 2485 2486 2487 2488 2489 2490 2491 2492 2493 2494 2495 2496 2497 2498 2499 2500 2501 2502 2503 2504 2505 2506 2507 2508 2509 2510 2511 2512 2513 2514 2515 2516 2517 2518 2519 2520 2521 2522 2523 2524 2525 2526 2527 2528 2529 2530 2531 2532 2533 2534 2535 2536 2537 2538 2539 2540 2541 2542 2543 2544 2545 2546 2547 2548 2549 2550 2551 2552 2553 2554 2555 2556 2557 2558 2559 2560 2561 2562 2563 2564 2565 2566 2567 2568 2569 2570 2571 2572 2573 2574 2575 2576 2577 2578 2579 2580 2581 2582 2583 2584 2585 2586 2587 2588 2589 2590 2591 2592 2593 2594 2595 2596 2597 2598 2599 2600 2601 2602 2603 2604 2605 2606 2607 2608 2609 2610 2611 2612 2613 2614 2615 2616 2617 2618 2619 2620 2621 2622 2623 2624 2625 2626 2627 2628 2629 2630 2631 2632 2633 2634 2635 2636 2637 2638 2639 2640 2641 2642 2643 2644 2645 2646 2647 2648 2649 2650 2651 2652 2653 2654 2655 2656 2657 2658 2659 2660 2661 2662 2663 2664 2665 2666 2667 2668 2669 2670 2671 2672 2673 2674 2675 2676 2677 2678 2679 2680 2681 2682 2683 2684 2685 2686 2687 2688 2689 2690 2691 2692 2693 2694 2695 2696 2697 2698 2699 2700 2701 2702 2703 2704 2705 2706 2707 2708 2709 2710 2711 2712 2713 2714 2715 2716 2717 2718 2719 2720 2721 2722 2723 2724 2725 2726 2727 2728 2729 2730 2731 2732 2733 2734 2735 2736 2737 2738 2739 2740 2741 2742 2743 2744 2745 2746 2747 2748 2749 2750 2751 2752 2753 2754 2755 2756 2757 2758 2759 2760 2761 2762 2763 2764 2765 2766 2767 2768 2769 2770 2771 2772 2773 2774 2775 2776 2777 2778 2779 2780 2781 2782 2783 2784 2785 2786 2787 2788 2789 2790 2791 2792 2793 2794 2795 2796 2797 2798 2799 2800 2801 2802 2803 2804 2805 2806 2807 2808

1997年12月15日

1. The first group of people who are interested in the study of the history of the United States are the people who are interested in the history of the United States.

[illegible]

Figure 6. The effect of the initial concentration of the monomer on the polymerization rate.

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

... ..

cases cited by defendants are cases in which a preliminary injunction was issued solely upon an unsworn bill, or cases in which the facts were not found in the order itself or preserved by a certificate of evidence. A case more like the present case is Love v. Love, 145 Ill. App. 150.

The further contention as to the order relieving complainants from giving bond is answered by the language of the statute, which is copied almost verbatim in the order in question. (Cahill's Statutes, Chap. 22, Par. 55.)

For the reasons stated, the order is affirmed.

AFFIRMED.

Gridley, F. J., and Barnes, J., concur.



was filed by defendant for cause in which a preliminary  
examination was taken which upon the return of the  
grand jury was held in the court room at  
the residence of defendant. A new jury was sworn  
at 10:30 A.M. 1st day of May.

The further examination of the case was held  
on May 1st at 10:30 A.M. and the jury was sworn  
at 10:30 A.M. and the examination was held  
at the residence of defendant. A new jury was sworn  
at 10:30 A.M. 1st day of May.

Verdict: 1st day of May, 1st day of May.

182 - 38458

JENNIE LEIBKER,

Appellee;

vs.

NEW YORK LIFE INSURANCE  
COMPANY, a corp.,

Appellant.

385  
APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

234 I.A. 633

Opinion filed June 4, 1924.

MR. PRESIDING JUSTICE TAYLOR delivered the opinion of the court.

On January 19, 1920, the defendant, New York Life Insurance Company, issued an insurance policy, in Chicago, on the life of one Nathan Leibker, for \$1,000. The policy contained the following words, "This policy \* \* \* shall be incontestable after two years from its date of issue except for nonpayment of premium." The insured died on February 28, 1921. On February 3, 1922, the plaintiff, Jennie Leibker, being the widow and beneficiary of the insured, brought an action of assumpsit on the policy in the Superior Court of Cook County.

On March 4, 1922, the defendant filed a special plea alleging substantially the following: That in the application of the insured, which was made a part of the policy, he falsely represented that he had no disease of the brain or nervous system, heart, or lungs, and that he had never consulted a physician for any ailment or disease of those organs, and had not within the preceding five years consulted any physician for any ailment whatsoever; that a diligent physical examination made by the Company's doctor failed to reveal the falsity of the above mentioned representations; that the policy



the - 1944

1944 - 1945

1945 - 1946

1946

1946 - 1947

1947 - 1948

1948 - 1949

1949 - 1950

1950 - 1951

1951 - 1952

1952 - 1953

1953 - 1954

1954 - 1955

1955 - 1956

1956 - 1957

1957 - 1958

1958 - 1959

1959 - 1960

1960 - 1961

1961

1961 - 1962

1962 - 1963

1963 - 1964

1964 - 1965

1965 - 1966

1966 - 1967

1967 - 1968

1968 - 1969

was issued based upon representations made by the deceased; that the defendant had no other information until after June 30, 1921, when it received "Proofs of Death," stating that Leibaker had died on February 28, 1921; that in July, 1921, it made an investigation and found that Leibaker had stated in his application that which was false, and had concealed important medical history. In the plea it is further alleged that at the time of the application Leibaker had pulmonary tuberculosis in a permanent form, from which he never recovered, and which caused his death; that all of said matters were wholly unknown to the defendant until after June 30, 1921; that Leibaker wilfully and fraudulently deceived the defendant, and intentionally concealed from it the truth concerning his physical condition, with the intention to defraud the defendant; that the defendant relied upon the representations made by the insured; that immediately upon discovery of the fraud and of the facts, it elected to and did disaffirm the contract or policy of insurance on August 8, 1921; that on that date it entered upon its records and files the fact of disaffirmance and rescission, and on that date wrote to the plaintiff, informing her that the insurance was obtained by fraud and misrepresentation, and that as a result thereof it rescinded the "policy contract" and had cancelled the policy on its records; that it tendered to her the premiums that had been paid, with interest; that the tender was made to her "not only as beneficiary under said policy but because so far as the company has been able to ascertain no legal representative of the estate of said insured has been appointed." The plea further alleges that the foregoing letter was delivered to the plaintiff on August 13, 1921, and that she was then tendered \$69.55 for



was issued based upon representations made by the company;  
that the defendant had no other information until after June  
30, 1931, when it received "Books of Facts" stating that  
Lafayette had died on February 20, 1931; that in July, 1931,  
it made an investigation and found that Lafayette was alive  
in his apartment house which was false, and that consequently  
important medical history. In the case it is stated that  
about at the time of the application Lafayette had undergone  
treatment in a hospital, from which he never recovered,  
and which caused his death; that all of said entries were  
falsely entered in the defendant's files after July 31, 1931;  
that Lafayette died of a heart attack; that the defendant  
and interested parties took it upon themselves to  
falsify the entries, with the intention of obtaining the money  
and that the defendant relied upon the representations made  
by the insured; that immediately upon discovery of the truth  
and of the facts, it elected to not file the entries in the  
policy of insurance on August 2, 1931; that on that date  
it advised upon the records and files the fact of Lafayette's  
and death, and as that date there is no entry, unless  
and that the insurance was dependent upon the fact of his death  
being true, and that as a result thereof it withdrew the policy  
entirely and has cancelled the policy on the grounds that  
it was based on the fact of Lafayette's death and now said, after which  
only that the entries were made to pay out any or part of the  
money and policy was returned to the company and the case  
will be decided on legal representation at the time of  
said hearing has been completed. The case is being handled  
that the insurance policy was delivered to the plaintiff at

premiums and interest; that no administration has ever been taken out or applied for upon the estate of the deceased; that no executor or administrator or other legal representative of his estate exists; that on September 7, 1921, the plaintiff returned the premiums and interest which had been paid to her, stating that she refused to accept them or any amount less than the face of the policy.

The plea further alleges that the defendant having done all it could or can do to effectuate rescission and restore the parties to status quo ante, and being unable to find any one against whom it could lawfully institute suit, at law or in equity, to enforce said rescission, continues its tender, and renews its offer to do anything that may be proper or necessary to complete rescission and restore all parties to status quo ante.

An affidavit of merits was attached which stated that the defense was rescission in fact, based on the fraud of the insured. To the special plea, the plaintiff filed a general demurrer. The trial judge sustained the demurrer, and the defendant electing to abide by its special plea, there was a finding and judgment against the defendant in the sum of \$1,075.00, and this appeal is taken therefrom.

As the case was decided by the trial judge upon a demurrer to the special plea, all of the facts therein alleged are taken to be true; that includes the fact that the contract of insurance on which suit was brought was obtained as the result of intentional fraud on the part of the deceased. It is claimed on behalf of the beneficiary that, as it was pro-



provision and interest; that no administration has ever been  
taken out or applied for under the power of the Statute;  
that no execution or administration has ever been taken out  
under the Statute; that no execution or administration has ever  
been taken out under the Statute; that no execution or administration  
has ever been taken out under the Statute; that no execution or  
administration has ever been taken out under the Statute.

The first question which arises in the mind of the  
court is whether or not the Statute is intended to  
enable the parties to the Statute to make a contract  
which shall be binding on the parties to the Statute  
and on the parties to the Statute; and whether or not  
the Statute is intended to enable the parties to the  
Statute to make a contract which shall be binding on  
the parties to the Statute and on the parties to the  
Statute.

As a preliminary to the consideration of the  
question, it is necessary to consider the question  
of the Statute. The Statute is intended to enable  
the parties to the Statute to make a contract which  
shall be binding on the parties to the Statute and  
on the parties to the Statute. The Statute is intended  
to enable the parties to the Statute to make a contract  
which shall be binding on the parties to the Statute  
and on the parties to the Statute.

As the case was decided by the House of Lords  
in the Statute, all of the Statute is intended  
to enable the parties to the Statute to make a contract  
which shall be binding on the parties to the Statute  
and on the parties to the Statute. The Statute is  
intended to enable the parties to the Statute to make  
a contract which shall be binding on the parties to  
the Statute and on the parties to the Statute.

vided in the policy that it should be incontestable after two years from its date, which was two years from January 19, 1920, and as suit was brought by the plaintiff on February 3, 1922, shortly after the expiration of the two years, no defense such as alleged in the plea, is available. On the other hand, it is claimed for the insurer that on August 12, 1921, when it notified the beneficiary, informing her that the insurance was obtained by fraud and that it rescinded the policy contract and had cancelled it, it brought about a rescission which put an end to the contract, and that, in any event, it had no remedy at law or in equity at any time before suit was filed by the beneficiary, and as a result, the operation of the incontestable clause was suspended after the death of the insured until suit was begun, and the plea, therefore, was filed in apt time.

In the view we take of the case, it is only necessary to consider the question of rescission; that is, did the acts of the insurer, which took place within the two years, and which were set up in the plea, so affect the insurance contract that thereafter there was no liability on the insurer.

What constitutes rescission in pais? In Black on Rescission and Cancellation, Sec. 1, the following language is used: "To rescind a contract is not merely to terminate it, but to abrogate and undo it from the beginning; that is, not merely to release the parties from further obligation to each other in respect to the subject of the contract, but to annul the contract and restore the parties to the relative positions which they would have occupied if no such contract had ever



—

aided in the policy since it would be necessary to  
 the state from the fact, which was not only the  
 15, 1901, and as such was covered by the Committee on  
 1, 1901, shortly after the completion of the two years, as  
 between such as appears in the first, is possible. On the  
 other hand, it is claimed that the interest that is  
 10, 1901, was it possible the possibility, certainly not  
 that the interest was intended by the state and that it was  
 aided the policy without and not intended to, it is possible  
 about a possible state was not to the interest, and that  
 in any event, it was as much as the state of the state  
 before said was filed by the possibility, and in a possible  
 operation of the interest state was intended after the  
 death of the interest state was not, and the state, there-  
 fore, was filed in the state.

In the case of the state, it is not possible  
 to consider the question of possibility, and it is not  
 one of the interest, which was filed with the state,  
 and which was not up to the state, as stated the  
 interest that interest state was as stated in the state.

That possibility was not possible in the state  
 operation and possibility, and it is not possible in  
 words: "To consider a possibility of the state of possibility, and  
 not to consider and not to the possibility, and it is not  
 merely to consider the possibility of the state, which was not  
 other is possible in the state of the state, and it is not  
 the possibility and interest the possibility in the state.

been made."

In Pacific Mut. Life Ins. Co. v. Alson, 134 N.E. 230, where an executor sued an insurance company for the policy of insurance which contained a one year incontestable provision, the court said, in considering the answer of the insurance company, "As finally made to read, \* \* \* each paragraph alleged such fraudulent misconduct of the insured in procuring the policy to be issued as would give appellant (the insurance company) the right to rescind it at any time before it became incontestable." In that case it was held that the notice of rescission was given a day too late, and it was intimated that if the notice had been given, as in the instant case, within the so-called incontestable period, it would have been good. New York Life Ins. Co. v. Adams, 151 Ark. 123.

In Lowery v. Mutual Loan Soc., 202 Ala. 51, the court said, "It is elementary law that one who has been induced to enter into a contract by the material misrepresentations of the other party, may, if he acts with reasonable promptness upon the discovery of the fraud, rescind the contract in toto; \* \* \* or, if sued for the consideration promised, he may defeat a recovery by pleading and showing an effective rescission."

In Bostwick v. Mutual Life Ins. Co., 116 Wis. 332, the court said, "We must not overlook the distinction between an action at law based on rescission for fraud,- an action where rescission necessarily precedes the existence of a cause of action,- and an action in equity for rescission.





In the former case rescission is effected by the act of the party injured. In the latter, he seeks the aid of a court of equity to effect rescission. In the one case there must be an election to rescind, fully acted upon." In that case the court held that what the plaintiff had done "effected a complete avoidance of the policy \* \* \* before the action was commenced."

In McCarthy v. New York Life Ins. Co., 74 Minn. 530, where the plaintiff had been induced by an agent of the defendant to take out a policy of insurance as the result of fraudulent representations of the agent, and had given his note for the premium, which note had been negotiated to a third person and judgment obtained on it, and the plaintiff required to pay it, and the plaintiff had then brought suit against the insurance company to recover the amount he had paid out, alleging, as the ground for his suit, rescission, the court held that as the plaintiff, on discovery of the fraud, had promptly returned the policy to the defendant with the request that it be cancelled and the note returned on the ground of false representations, there was a rescission, and he had a right to recover.

In Ludington v. Patton, 111 Wis. 208, the court distinguishes between "an action for rescission and an action based on rescission."

In Thomas v. Beals, 154 Mass. 51, a distinction was recognized by the following language of Mr. Justice Holmes, "A bill in equity is not like an action at law, brought on the footing of a rescission previously completed. \* \* \* The founda-



In the instant case, the defendant is alleged to have been guilty of a crime, and the plaintiff is alleged to have been injured by the commission of the crime. The plaintiff is alleged to have been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime. The plaintiff is alleged to have been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime. The plaintiff is alleged to have been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime.

In Plaintiff's Complaint, the following facts are alleged:

1. That the plaintiff has been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime. The plaintiff is alleged to have been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime. The plaintiff is alleged to have been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime. The plaintiff is alleged to have been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime. The plaintiff is alleged to have been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime.

In Defendant's Answer, the following facts are alleged:

1. That the plaintiff has been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime. The plaintiff is alleged to have been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime. The plaintiff is alleged to have been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime. The plaintiff is alleged to have been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime.

In Plaintiff's Reply, the following facts are alleged:

1. That the plaintiff has been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime. The plaintiff is alleged to have been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime. The plaintiff is alleged to have been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime. The plaintiff is alleged to have been injured by the commission of the crime, and the defendant is alleged to have been guilty of the crime.

tion of this bill is that the rescission is not complete, and asks the aid of the court to make it so."

In Brokerage Company v. Wharton, 143 Ia. 61, the court stated that where one party to a contract furnished a legal ground for rescission the other party to the contract might rescind it without obtaining the former's assent thereto.

In American Cent. Life Ins. Co. v. Rosenstein, 46 Ind. App. 537, the court said: "The question now being considered is one of first impression in this State, and sound reason requires us to hold that an election to rescind because of a breach of warranty or for fraud should not only be made known to the person entitled to enforce payment of the policy, but a tender or offer to return the premiums should be made to such person with reasonable promptitude after knowledge of all the facts. In case of refusal to accept and suit is commenced on the policy, such premiums may be paid into court for the benefit of the party entitled thereto."

It will be seen, therefore, that it is a general principle of the law that a contract may be rescinded in pais, and the question then arises whether a contract which is a policy of insurance, is an exception to the rule.

In Mutual Life Ins. Co. of New York v. Rose, 294 Fed. Rep. 122, the insurer brought suit in equity to cancel two policies of insurance. Each policy provided that it should be incontestable "after two years from its date of issue, except for non-payment of premiums." Suit was brought more than two years after the date of issuance of each policy. The court



them of this bill is that the reservation is not complete, and  
ask the aid of the court to make it so.

In *Shawmut Lumber Co. v. Shattuck*, 122 Me. 11, 123

court stated that where one party to a contract furnished a  
legal ground for rescission the other party to the contract  
might rescind it without obtaining the former's consent.

In *Shawmut Lumber Co. v. Shattuck*, 122 Me. 11, 123

122 Me. 11, 123, the court said: "The question now being con-  
sidered is one of first impression in this State, and some  
reason requires us to hold that an election to rescind depends  
of a breach of contract on the facts which not only are  
known to the person entitled to exercise payment of the policy,  
but a tender or offer to return the premium should be made  
to such person with reasonable promptness after knowledge of  
all the facts. In case of refusal to accept and suit is com-  
menced on the policy, such person will be held to have  
for the benefit of the party entitled thereto."

It will be seen, therefore, that it is a general  
principle of the law that a contract may be rescinded in whole,  
and the question then arises whether a contract made in a  
policy of insurance, be an exception to the rule.

In *Shawmut Lumber Co. v. Shattuck*, 122 Me. 11, 123

122 Me. 11, 123, the court further said in writing its opinion  
two policies of insurance. Each policy provided that it should  
be irrevocable "after two years from the date of issue, and  
the payment of premium."

said, "The ground upon which cancellation is sought is that the policies have been rescinded. The allegation is that the application contained misrepresentations as to the insured's health and liquor habits; that plaintiff became aware of such misrepresentations and, on the ground thereof, on or about April 14, 1931 (that is, within the two years) tendered to the defendants the premiums which had theretofore been paid, and demanded the surrender of the policies to it, which they refused, and thereby it is claimed the policies became and were rescinded." In an elaborate opinion containing an analysis of the following cases, Mutual Life Ins. Co. v. Buford, 61 Okla. 158, 160 Pac. 928; American Trust Co. v. Life Ins. Co. of Va., 173 N.C. 538, 92 S.E. 706; Ebner v. Ohio State Life Ins. Co., 69 Ind. App. 32, 121 N.E. 315; Hardy v. Phoenix Mut. Life Ins. Co., 180 N.C. 180, 104 S.E. 166; Emmery v. Old Colony Life Ins. Co., 297 Ill. 592, 131 N.E. 108; Reliance Life Ins. Co. v. Thayer, 84 Okl. 238, 203 Pac. 190, the court said that in only one of these cases, to-wit, the Ebner case, had there been a rescission of the policy of insurance during the period of contestability, and that in the other five there was not presented nor considered the question whether if there had been a rescission during which period, a suit might be brought to cancel the policy on the basis of such rescission after the expiration of the period, or whether in a suit brought on the policy thereafter such rescission could be relied on as a defense to the suit.

In that case, also, the court considered the Mutual Life Ins. Co. v. Murni Packing Co., 280 Fed. 18, and Jefferson Standard Life Ins. Co. v. McIntyre, 285 Fed. 570, and concluded





that the Murni case supported the contention that a rescission in pais within the contestable period was a sufficient act of contest, and that proceedings in court were not essential and that the McIntyre case was not in point. In the Ebner case, rescission was set up as a defense and sustained. In the Rose case, the court used the following language:

"if a policy of insurance has been rescinded for fraud in the way thus pointed out, during the period of contestability, may not such rescission be relied on as a ground of a suit in equity to cancel the policy, brought after the expiration of such period, or may it be pleaded as a defense to a suit brought on the policy after the expiration of such a period? It seems to me that it is hardly necessary to do more than state this question than to come to the conclusion that the incontestability clause is not in the way of the bringing of such a suit or the making of such a defense. The question answers itself. There is nothing in such clause that is in the way of a policy in such a case being rescinded; i.e., brought to a termination in such a way. That clause has nothing to do with what may or may not be done during that period. It only deals with what may not be done after the lapse of that period. Can it be possible that such clause, which does not inhibit such a termination of the policy of insurance during such period, does inhibit its being availed of after the lapse of such period? Such a position - i.e., as to the termination of the policy by rescission, taken in a suit to cancel, or in an answer to an action to recover on the policy - cannot really be said to be a contest as to the policy; i.e., as to its validity. It is merely a claim that it has come to an end and that, even though such claim is based on the voidability of the policy, entitling the insurer to bring it to an end.

What is sought is not an avoidance of the policy. It has already been avoided during the contestable period, and what is relied on is that it has already been so avoided."

The Murni Packing Co. case, (supra), went to the Supreme Court of the United States, but the actual question here under consideration, was not there considered. There seems to be, however, some conflict in the decisions in the Federal Courts. There is a dictum in Northwestern Mut. Life Ins. Co. v. Pickering





293 Fed. 498, (Oct. 23, 1923) to the effect that the insured could, and should have brought suit within the incontestable period, and that a contest imports litigation either by suit or defense to one. But in that case the policy had already been in force for the full term, and application had been made thereafter for reinstatement, which had been allowed. On the facts, it is not in point.

There are cases in other jurisdictions where the matter here involved, has been considered, and which point the other way. American Trust Co. v. Life Insurance Co. of Va., 173 N.C. 558, is such a case, although in that case when the insurer undertook to make a rescission, it refused to inform the plaintiff as to the facts which it claimed it had discovered, and which rendered the policy void. Another case is Humpston v. State Mutual Life Assur. Co., 256 S.W. 438, but in that case the court assumed that there could not be rescission save by mutual consent, and no authorities were cited. Jefferson Standard Life Ins. Co. v. Keeton, 392 Fed. 53, cited for the plaintiff, is not in point, as, there, suit was brought by the insurer within the incontestable period. And the latter statement is true of Mutual Life Ins. Co. v. Wiegmann, 256 S. W. 505.

The only case in this state in which the matter, seemingly, has been expressly considered is that of Powell v. Mutual Life Ins. Co., 329 Ill. App. 59. In that case the defendants, sued on a policy of insurance containing a two year incontestable clause, claimed fraud, as in the instant case. The plea set up fraud, and that the company had cancelled the policy on the ground of fraud and tendered back the





premiums which had been paid, and demanded a return of the policy. The court sustained the demurrer to the plea, and although stating that it is an elementary rule of law that fraud vitiates all contracts, whether of insurance or otherwise, held, basing its conclusion, apparently, chiefly on the Ramsay case, (supra) that rescission was not a defense; and said: "The court there held that the contest referred to meant a contest in court where there was a plaintiff and a defendant, to which the insured and the insurer or his representatives or beneficiaries are parties."

A careful analysis of the Ramsay case does not seem, however, actually to decide the question. In the Ramsay case, a policy of insurance was issued on September 7, 1916, to one Klebeczka for \$2,000, payable to him upon his attaining the age of eighty-five years, or to his estate in case of his previous death. It contained a one year incontestable clause. The insured died on April 13, 1917, and an administrator was appointed on July 19, 1918, who brought suit on the policy on November 7, 1918. The defendant, on May 12, 1919, filed a plea alleging fraud in the procurement of the policy. A demurrer to that plea was sustained, and the plaintiff recovered. The court announced the principle that although the death of the insured within the year did not destroy the one year incontestable provision, yet as there was no one in existence whom it could sue, as it had no power to have an administrator appointed, the application of the incontestable clause was suspended until an administrator was appointed. The court held that as the record showed that an administrator was appointed on July 19, 1918, and that the defendant had knowledge of the fraud on July 1,





1918, and filed its plea on May 12, 1919, and so had allowed several months after its discovery of the fraud, and after the appointment of the administrator before the expiration of the year in which it might have filed a bill to cancel the policy, to expire, it had permitted, by its negligence, the incontestable period, under the principle announced above, to lapse.

Neither in the Ramsey case, supra., nor the cases of Manahan v. Metropolitan Life Ins. Co., 283 Ill. 136 and Joseph v. New York Life Ins. Co., 302 Ill. 93, was the question of rescission, as it occurs in the instant case, considered.

It is true that there are some words in the Ramsey case that may be construed so as to suggest that to precipitate a contest, there must be litigation; for example, Mr. Justice Dunn, therein said, "the company may have one year (that being the contestable time in that policy) and no more, for investigation of the questions material to its risk, and if it does not within that time, either as plaintiff or defendant, contest the policy it cannot do so afterward." The use of the words "either as plaintiff or defendant," would mean if taken literally, that there must be litigation, and that nothing in pais, such as the acts of rescission here pleaded, would suffice. But, we do not think we are justified in placing our judgment here upon that innuendo which occurs merely in the course of the general literature of the opinion and upon a subject not essentially connected with the crux of the case, nor pertaining to the reasoning leading up to the actual decision of the case.



...the ... of ...

It is true that there are some words in the language  
which may be considered as so vague that it is impossible  
to say, there must be legislation for example, to provide  
that, therein said, "the company may have one best (that being  
the most desirable time in that policy) and no more, but any other  
time of the question relating to the risk, and it is that that  
within that time, either as liability or otherwise, constant  
the policy it cannot be so determined." The use of the words  
"either as liability or otherwise," would seem to mean liability  
and there must be legislation, and that nothing in this, and so  
the acts of legislation have passed, and it will, and so  
we now think we are justified in giving our judgment that  
that language which occurs merely in the course of the general  
discussion of the subject and does not contain any material  
statement as to the law, and is not intended to be  
materially different from the general position of the law.

In the instant case, the insurer did all that could be done to accomplish rescission, including in what was done, attempted restitution as to premiums that had been paid. The policy, assuming the fraud alleged in the plea, was avoidable ab initio, and, upon due and proper election and notice after the discovery of the fraud, and within two years, was at an end. What was done is admitted. A beneficiary may dispute the claimed rescission, and, thereafter, sue, and if the defendant fails in its proof, may recover, but the issue there would be not whether the insured was at the time of the trial entitled to rescind, but whether, according to the history of the prior conduct of the insured it had accomplished rescission. Until such a policy becomes incontestable by the lapse of the time fixed, it is, like other contracts, subject, as they are, in court or out, to rescission for fraud.

The insurer, here, notified the plaintiff on August 12, 1921, that on August 8, 1921, it elected to, and did thereby rescind the policy contract, and stated the facts of fraud. That was notice of a matter of fact; and it was pleaded and by the demurrer admitted; and it took place within the two year period. That we think was sufficient.

The statutory provision as to incontestability was not enacted to put a premium on fraud. It was enacted to accelerate a just claim or defense, if any, on the part of the insurer. That being the case, if, early in the history of a policy of insurance, here within two years, and immediately upon discovery of the fraud, the insurer renounces and rescinds the contract and notifies the insured or the beneficiary



In the instant case, the instant bill will be  
 be some to accomplish something, including in that case,  
 assigned something as to persons that are not paid. The  
 policy, assuming the kind alleged in the bill, was  
 side of public, and, upon the same classification and action  
 after the discovery of the fraud, and which has been, the  
 action and. That was done in relation. A preliminary  
 dispute the claimed knowledge, and, consequently, and, and if  
 the following fact in its own, may however, but the same  
 there would be not whether the instant was at the time of the  
 fact related to person, but whether, according to the dis-  
 tory of the fact conduct of the instant it had established  
 resolution. Until such a policy person knowledge by the  
 issue of the fact, it is, like other evidence, subject,  
 as they are, in such as only, as evidence for fact.

The instant, now, against the government as subject  
 in, that, that is subject to, and, as subject to, and, as subject  
 to, against the policy, and, against the fact of fact,  
 against the fact of fact, and, as subject to, and, as subject  
 the instant subject, and, as subject to, and, as subject  
 period. That we think was sufficient.

The statutory provision is an immaterially was  
 not subject to, and, as subject to, and, as subject to, and,  
 against a fact claim of fact, it was, as subject to, and,  
 against. That being the case, it, only in the instant of a  
 policy of insurance, but, against the fact, and, against  
 upon discovery of the fact, the instant knowledge and law

of the facts, that renunciation and rescission ought to be considered good. It is no hardship on the insured or the beneficiary; and the necessity that such acts shall take place within the so-called incontestable period, preserves the rights, which the legislature had in mind, when it enacted the law.

Taking that view of the case, it becomes unnecessary to discuss whether or not, considering the facts pleaded, the operation of the incontestable clause - as in the Ramsay case - was suspended.

Being of the opinion that the special plea alleged facts sufficient to show rescission consummated within the contestable period of two years, we are of the opinion that the demurrer should have been overruled.

The judgment, therefore, will be reversed and the cause remanded.

REVERSED AND REMANDED.

O'CONNOR, J. AND THOMSON, J. CONCUR.



at the time, that communication was maintained with it as far as possible. It is no longer in the hands of the Government, but it is still in the possession of the Government.

233 - 28509

WEST FLORIDA GROCERY CO.,

Appellee,

v.

J. HENRY KRAUSE, ET AL,

Appellants.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

234 I.A. 633

Opinion filed June 11, 1924.

MR. PRESIDING JUSTICE TAYLOR delivered the opinion of the court.

On May 28, 1921, the plaintiff, West Florida Grocery Co., brought suit in the Municipal Court of Chicago, against the defendants, J. Henry Krause and The Krause State Savings Bank, a corporation, and filed a statement of claim. The defendants were duly served with summons, and on June 7, 1921, filed their appearance. On Motion of the defendants, the statement of claim that had been filed was stricken, and on June 18, 1921, the plaintiff filed an amended statement of claim. That claim is as follows:

"Plaintiff's claim is for \$688.00 for hog feed delivered to the Club Farm & Town Development Syndicate, Vilas, Florida.

Plaintiff alleges that it delivered to the Club Farm & Town Development Syndicate on various dates as shown by statement attached marked 'Exhibit A' and made a part of this statement of claim amounting to \$688.00 which is shown in detail by said statement attached marked 'Exhibit A'.

Plaintiff alleges that said goods were received by and O.K.'d by Mr. Watts.

Plaintiff alleges that on to-wit: May 14th, 1919, the defendant, J. Henry Krause and the Krause State Savings Bank, (a corporation) guaranteed the payment of these shipments, which guarantee is in words and figures as follows:

'KRAUSE STATE SAVINGS BANK,  
Chicago, May 14, 1919.



THE UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

UNITED STATES

DEPARTMENT OF JUSTICE

UNITED STATES

UNITED STATES OF AMERICA

DEPARTMENT OF JUSTICE

UNITED STATES OF AMERICA

Opinion filed June 11, 1934.

RE. PETITION FOR WRIT OF HABEAS CORPUS

IN FAVOR OF

JOHN EDGAR HOOVER, PETITIONER

VS. UNITED STATES OF AMERICA, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

AND THE DISTRICT ATTORNEY GENERAL, RESPONDENT

West Florida Grocery Co.,  
Pensacola, Fla.

Gentlemen:- Mr. Frederick Watts, who is in charge of the development of the Hog Farm of the Club Farms and Town Development Syndicate, at Deer Hunt, Florida, desires to place some of his feed orders with you; and you are hereby authorized to fill his orders for feed to be shipped to Deer Hunt - and we will guarantee payment of these bills upon Mr. Watts' O.K. yours truly, J. Henry Krause, President.'

Plaintiff alleges they have requested both J. Henry Krause and the Krause State Savings Bank to pay this account several times and that both defendants have refused and still refuse to pay this account to the damage of the plaintiff of \$668.00"

Subsequently, on July 8, 1921, the defendants filed an affidavit of merits. On November 23, 1922, an order was entered containing the following:

"Now comes the plaintiff in this cause, the defendant being absent and not represented and thereupon this cause comes on in regular course for trial before the Court without a jury and the Court having heard the evidence and the arguments of counsel, and being fully advised in the premises, enters the following finding, to-wit:

'The court finds the issues against the defendants, J. Henry Krause and The Krause State Savings Bank (a corporation) and assesses the plaintiff's damages at the sum of six hundred sixty eight and no/100 Dollars (\$668.00)."

Accordingly, pursuant to that finding, judgment was entered in favor of the plaintiff against the defendants for the sum of \$668.00.

This appeal is from that judgment.

No Bill of Exceptions has been filed, and all we have to consider is the common law record.

It is contended on behalf of the defendants that



Secretary, Treasury, 1911.

Washington, D.C.

Dear Sir: I have the honor to acknowledge the receipt of your letter of the 10th inst. and in reply to inform you that the same has been forwarded to the proper authorities for their consideration. I am, Sir, very respectfully,  
Yours truly,  
J. Edgar Hoover, Director.

Enclosed for you are two copies of a report of the Committee on the Administration of the Department of Justice, which was submitted to the Senate on the 10th inst. and is being published by the Government Printing Office. I am, Sir, very respectfully,  
Yours truly,  
J. Edgar Hoover, Director.

Very respectfully,  
J. Edgar Hoover, Director.

Enclosed for you are two copies of a report of the Committee on the Administration of the Department of Justice, which was submitted to the Senate on the 10th inst. and is being published by the Government Printing Office. I am, Sir, very respectfully,  
Yours truly,  
J. Edgar Hoover, Director.

Very respectfully,  
J. Edgar Hoover, Director.

Enclosed for you are two copies of a report of the Committee on the Administration of the Department of Justice, which was submitted to the Senate on the 10th inst. and is being published by the Government Printing Office. I am, Sir, very respectfully,  
Yours truly,  
J. Edgar Hoover, Director.

Enclosed for you are two copies of a report of the Committee on the Administration of the Department of Justice, which was submitted to the Senate on the 10th inst. and is being published by the Government Printing Office. I am, Sir, very respectfully,  
Yours truly,  
J. Edgar Hoover, Director.

Very respectfully,  
J. Edgar Hoover, Director.

Very truly,  
J. Edgar Hoover, Director.

Very respectfully,  
J. Edgar Hoover, Director.

Very truly,  
J. Edgar Hoover, Director.

Very respectfully,  
J. Edgar Hoover, Director.

Very truly,  
J. Edgar Hoover, Director.

the defendant Bank is not liable under the instrument sued upon, because it does not contain the signature of the Bank, and it is not alleged by the plaintiff in its statement of claim that the Bank executed it; or that the Bank had any power to make it; or that the Bank ever received any consideration therefor, or benefit thereunder. Not knowing what evidence was introduced on the trial of the cause, and as the presumption is, from the state of the record which appears before us, that the plaintiff introduced sufficient evidence to sustain its claim and justify the finding and the judgment of the court, those contentions are untenable. For aught we knew, sufficient evidence was introduced on all those matters on the trial of the cause. Further, it must also be assumed that, if there was any ambiguity in the terms of the written guaranty as to the liability of Krause, or the liability of both of the defendants, sufficient evidence was introduced upon that subject to explain them away. The fact that the statement of claim sets up that Krause and the Krause State Savings Bank guaranteed the payment of the shipments, which guaranty is in certain words and figures, did not prevent the plaintiff from introducing further evidence, as to the guaranty, than is actually contained in the writing as it is set forth in the statement of claim. The plaintiff set up in its statement of claim that it delivered the merchandise to the Club Farm & Town Development Syndicate; that the "goods were received by and O.K.'d by Mr. Watts." Counsel for the defendants argue that the guaranty of payment was to be made upon Watt's O.K. of the bills, and not upon his O.K. of the receipt and approval of the goods as alleged in the statement of claim. All that





may have been clearly explained, and the difference, if any, cleared away by evidence on the trial.

It is further contended that the amended statement of claim did not state a cause of action against the defendants. This was a case of the Fourth Class in the Municipal Court, and, in our judgment, the statement of claim amply informed the defendants of the nature of the claim made. McCluney v. Gillespie, 327 Ill. App. 400.

It is further contended that there is nothing in the banking laws of this state which would authorize the defendant bank to make the guaranty, but we do not even know whether the defendant bank was organized under the laws of Illinois. The affidavit of assets of the Bank, of course, we cannot consider as evidence. A pleading per se, is not evidence. We do not know, therefore, whether the undertaking by the Bank was ultra vires. With the record before us, the question whether the guaranty was ultra vires, does not arise.

Finding no error in the record, the judgment will be affirmed.

AFFIRMED.

O'CONNOR, J. AND THOMSON, J. CONCUR.



RECEIVED  
JAN 10 1964

It is further explained that the company's financial statements are not audited by an independent auditor, and that the company's financial statements are not audited by an independent auditor.

It is further mentioned that there is something in the building laws of this state which really forbids the collection of rent so long as the property, not as in New York State, whether the defendant owns or occupies same, has been in Illinois. The attorney at large of the city, he claims, no longer exercises his authority. A building law is in effect. As to how, however, whether the building law is being by the state or local officials. It is the record of the case, the question whether the property was built under the law.

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

250 - 28526

CHARLES B. TRAVIS,

Appellee,

v.

HERMAN W. GROSSMAN, et al,

Appellants.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

234 I.A. 633

Opinion filed June 11, 1924.

MR. PRESIDING JUSTICE TAYLOR delivered the opinion of the court.

This appeal is from a judgment in the sum of \$270, in the Municipal Court, in favor of the plaintiff, Charles B. Travis, and against the defendants, Herman W. Grossman and Goldie S. Grossman.

In August 1921, the defendant Herman W. Grossman (hereinafter called "Grossman") went to the office of the plaintiff, and referring to certain property known as 4801 and 4803 St. Lawrence avenue, said, according to Grossman's testimony, "I bought this property and I was ready to sell if I could find a buyer." One Tweigg, bookkeeper for the plaintiff, testified that he was present when Grossman called at the office of the plaintiff in August 1921, and that he heard Grossman tell the plaintiff to get a purchaser for the building and that he would receive his full commission; that the bookkeeper made an entry in the plaintiff's books, describing the property in question. The entry was in part as follows: "\$32,000, might consider 30,000, cash down 5,000."



2083

Page 4

March 1, 1904

Dear Sir,  
I have the honor to acknowledge the receipt of your letter of the 28th inst. in relation to the matter of the ...  
Very respectfully,  
J. H. ...

Opinion filed June 1, 1904.

It is respectfully suggested that the ...  
Very respectfully,  
J. H. ...

This matter relates to the ...  
In the ...  
Very respectfully,  
J. H. ...

It is suggested that the ...  
The ...  
Very respectfully,  
J. H. ...

It showed, also, that the property was subject to a mortgage of \$18,000, due in three years. Shortly after giving the plaintiff authority to sell the property Grossman went to Europe.

The plaintiff testified that Grossman, before going to Europe, told him that "whatever proposition you get on this matter you may take it up with Arcola of Chandler & Hildreth;" that Arcola had a power of attorney and "the deed is signed by me and my wife; it is already there."

The plaintiff as a licensed real estate dealer then went to work to get a purchaser. One Oshman came to his office and asked him about what he had for sale, and he took him out and showed him the property in question. Sometime in December, 1931, Oshman made an offer of \$30,000 for the property. In the early part of January, 1932, Grossman returned, and the matter of the sale was taken up by him with the plaintiff and Oshman, both at the plaintiff's office and in the office of Chandler & Hildreth.

There was offered in evidence a letter dated January 10, 1932, signed by Oshman, and Travis, the plaintiff, purporting to submit an offer by Oshman for \$28,000 for the property upon the terms as agreed, and which was submitted to Arcola. That letter recites that Oshman had deposited with the plaintiff a check for \$200. It was written by the bookkeeper of the plaintiff, in the presence of the plaintiff and Oshman, and at the time it was written the check mentioned therein was given by Oshman to the plaintiff. A few days later, according to the testimony of Oshman, Grossman and he were at the plaintiff's office, where he, Oshman had gone to close the deal.



It should be noted that the above information was obtained from a confidential source who has provided reliable information in the past. The source has provided information on a number of occasions and has been found to be reliable.

THE POLICE DEPARTMENT HAS BEEN ADVISED THAT THE  
MURDER OF MARTIN LUTHER KING, JR. WAS A  
"TERRORIST ACT" AND NOT A CRIME OF PASSION.  
THE POLICE DEPARTMENT HAS BEEN ADVISED THAT THE  
MURDER OF MARTIN LUTHER KING, JR. WAS A  
"TERRORIST ACT" AND NOT A CRIME OF PASSION.

The following is a summary of the results of the investigation conducted by the Committee on the subject of the alleged activities of the "Black Legion" in the city of Chicago, Illinois, during the year 1935.

These are the only two cases in which the defendant has been found guilty of a crime. In all other cases, the defendant has been found not guilty. The reason for this is that the defendant has been found to be innocent of the crime. The evidence presented in the trial was not sufficient to prove the defendant's guilt beyond a reasonable doubt. The jury was instructed to find the defendant not guilty if they were not convinced of his guilt beyond a reasonable doubt. The jury found the defendant not guilty in all cases except the two mentioned above.

Oshman says that Grossman made an appointment to meet in a day or two at the office of Chandler & Hildreth. The parties met, accordingly, at that office. There were present, the plaintiff, Oshman, Grossman and Wild, the latter being one of the members of the firm, or an employee of the firm of Chandler & Hildreth. The evidence is somewhat in conflict as to what transpired at that meeting. Grossman testified that after he had talked with the plaintiff and Oshman at plaintiff's office, he had suggested that they meet at Chandler & Hildreth's and talk the matter over, and, accordingly, they met and began negotiations; that in the course of the discussion, he, Grossman, suggested that the commission would have to be divided between the plaintiff, on the one hand, and Chandler & Hildreth on the other; that the plaintiff at first refused, and finally said that he would take \$500 and let Chandler & Hildreth take the balance; that he, Grossman, then said that he would be willing to pay full commission, but not to two different brokers. Oshman stated that a day or two after he gave his check for \$300, he saw Grossman at the office of the plaintiff, and the price mentioned was \$29,000. When he was asked concerning the negotiations at the office of Chandler & Hildreth, he said that a contract was drawn up by one Wild; that it differed slightly in price from the proposition he had submitted, the price being \$29,000 instead of \$28,000. When he was asked if he was willing to carry out whatever the terms of the contract were at that time, he answered, yes, and that he had the money in the bank. He further testified that he was ready, willing and able to buy the property in question according to the terms discussed at the time he was at Chandler & Hildreth's office; that he was willing to sign a contract there that day.





The plaintiff testified that Grossman was given Oshman's check for \$300 at the time he showed Grossman the proposition of Oshman on January 10, 1933, which was an offer to purchase for the sum of \$25,000, and that Grossman wanted him to endorse over to him, Grossman, the written proposition of Oshman, but he, the plaintiff, refused; that Grossman kept the check until he, the plaintiff, went to the meeting at Chandler & Hildreth's. The plaintiff further testified that Oshman made a proposition to Grossman of \$25,000, which was the figure that Grossman had given him, and a contract to that effect was drawn up by Wild; that the contract was not signed, and he did not know where it was; that Grossman would not sign it "Because he wouldn't pay me the commission."

It will be seen, therefore, from the evidence that the plaintiff was properly authorized by the defendants to procure a purchaser for the property in question, and that he did procure a purchaser for a price which, in and of itself, was satisfactory to the defendants, or to Herman W. Grossman, acting as agent for himself and his wife. The evidence also shows that the fact that the sale did not go through was in no way the fault of the plaintiff. The trial judge, evidently, believed the testimony of the plaintiff and his bookkeeper and Oshman, and their evidence, taken together, demonstrates that the plaintiff did all that was necessary to entitle him to a commission.

Counsel for appellants, in their brief, say: "The clear preponderance of the evidence shows that Grossman was willing to accept \$25,000.00, provided he had only one commission to pay." As, therefore, the plaintiff had been employed



The President Committee has received the letter

from the Board of Directors of the American Society for the  
Prevention of Cruelty to Animals, dated March 10, 1909, in which  
they request the aid of the President Committee in the  
organization of a campaign for the abolition of the  
use of animals in the circus, and in the exhibition of  
animals in the streets. The President Committee has  
been asked to take action on this matter, and to  
advise the Board of Directors of the American Society for  
the Prevention of Cruelty to Animals of the results of  
their action.

It will be seen from the letter that the  
President Committee has been asked to take action on this  
matter, and to advise the Board of Directors of the  
American Society for the Prevention of Cruelty to Animals  
of the results of their action. The President Committee  
has been asked to take action on this matter, and to  
advise the Board of Directors of the American Society for  
the Prevention of Cruelty to Animals of the results of  
their action. The President Committee has been asked to  
take action on this matter, and to advise the Board of  
Directors of the American Society for the Prevention of  
Cruelty to Animals of the results of their action.

Respectfully,  
The President Committee

to sell it, to find a purchaser ready, willing and able, and had done so, and Grossman had no objection and was willing to sell at the terms, he could not defeat the plaintiff's right to commission, no matter what his relations with Chandler & Hildreth. His promise to the plaintiff ripened into a binding obligation to pay him, when Oshean was produced ready, able and willing to buy. That Grossman consulted Chandler & Hildreth, and may have given them an exclusive agency before he employed the plaintiff, could not in the eyes of the law, affect or extinguish his promise to the plaintiff. When the plaintiff had finished his work that promise was transmuted into a binding legal obligation to pay a commission to the plaintiff.

There is some claim on behalf of the defendants that the proposition of Oshean was at all times subject to ratification by one Diamondstone, but the record shows that when Oshean was recalled by the court, he testified that he was willing to sign the contract there that day, and, apparently, without any reference to the so-called partner. Further, it is obvious that the sale would have gone through had it not been for Grossman's attitude as to the commission due the plaintiff.

It is also contended for the defendants that the plaintiff was not a licensed broker, and so could not maintain his action. The evidence showed that the plaintiff - although he had a state license, was not licensed as a real estate broker by the City of Chicago. However, in the affidavit of veritas of the defendant, no such defense is relied upon.

In Wendley v. Zeman, 170 I.L. App. 368, the following





language is used:

"The fourth and last objection raised is that the record does not show that at the time the contract in question was made the plaintiff had a license from the city of Chicago authorizing him to do business as a mason contractor. In the affidavit filed by the defendant this was not relied upon as a defense. The question of a license is one collateral to the suit, and it has many times been held that in such circumstances the issuance of a license will be presumed unless proof to the contrary is presented by the other party to the litigation. Williams v. People, 20 Ill. App. 92; City of Chicago v. Food, 34 id. 40; Shendorf v. Gorman, 88 id. 278; Good v. Lasher, 97 id. 253; County of Jo Daviess v. Staples, 106 id. 538; Brunswick v. Hurley, 131 id. 235. Even if the rule were to be the contrary, the point should have been raised in the trial court."

A careful examination of the record leads us to the conclusion that we are not justified in overruling the judgment of the trial judge as against the manifest weight of the evidence, and, further, that no substantial errors were made in the trial of the case.

The judgment, therefore, will be affirmed.

AFFIRMED.

O'CONNOR, J. AND THOMPSON, J. CONCUR.





278 - 28554

3856a

THE WHITTIER COMPANY,  
a corp.,

Appellee,

v.

GRAND TRUNK WESTERN RAILWAY  
COMPANY,

Appellant.)

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

234 I.A. 633

Opinion filed June 11, 1924.

MR. PRESIDING JUSTICE TAYLOR delivered the  
opinion of the court.

This is an appeal from a judgment in the sum of  
\$269.01, obtained by the plaintiff, The Whittier Company,  
against the defendant, Grand Trunk Western Railway Company,  
in the Municipal Court of Chicago.

The statement of claim alleged that on April 28,  
1917, at Mishawaka, Indiana, the plaintiff turned over to the  
defendant certain merchandises addressed to Automobile Necess-  
ities Co., 5716 Euclid avenue, Cleveland, Ohio, for which the  
defendant issued a bill of lading and agreed to deliver the  
merchandise to that company at Cleveland; that the defendant  
failed to deliver the merchandise, and the plaintiff filed a  
claim for loss with the defendant; that on March 20, 1918, the  
defendant notified the plaintiff that the merchandise had been  
stored by it at The Lincoln Fireproof Storage Co., 5700 Euclid  
avenue, Cleveland; that the plaintiff then instructed the defend-  
ant to reconsign the merchandise to the plaintiff at Chicago;  
that the defendant ignored the instructions and failed and



1884 - 1885

THE CHIEF OF THE  
RAILROAD

CHIEF

CHIEF OF THE  
RAILROAD

CHIEF

1884 - 1885

Option filed June 11, 1884.

THE CHIEF OF THE RAILROAD

CHIEF OF THE RAILROAD

This is to certify that a copy of the

copy of the

copy of the

copy of the

The statement of the

statement of the

statement of the

statement of the

statement of the

statement of the

statement of the

statement of the

statement of the

statement of the

statement of the

refused to return the merchandise to the plaintiff; that the merchandise was of the value of \$269.01; and that by reason of the defendant's failure and refusal to deliver or return the merchandise as instructed, the plaintiff was damaged in the amount aforesaid.

The affidavit of merits denies that the defendant received a shipment marked and billed as alleged, but avers that it did receive a shipment from the plaintiff "consigned to plaintiff, notify Automobile Necessities Company, Cleveland, Ohio." It denies that it failed to deliver the shipment as directed, but avers that the shipment was refused by said Automobile Necessities Company, and denies that the plaintiff instructed it to return the shipment to the plaintiff, or tendered the legal charges therefor, and denies that the shipment was of the value alleged.

At the trial, which was before a jury, one Goldberg, treasurer and general manager of the plaintiff, testified that in April, 1917, the plaintiff shipped over the Grand Trunk Railway the merchandise in question, and that after the shipment, he corresponded with the defendant in regard to it; and that the merchandise was never returned to the plaintiff, and that the reasonable market value of the merchandise was \$269.00. The only other evidence that was introduced was made up of certain letters and telegrams. No evidence was put in by the defendant.

On September 26, 1917, the defendant wrote the plaintiff, acknowledging the receipt of the plaintiff's claim. On October 29, 1917, plaintiff wrote the defendant, stating that it had forwarded under date of September 24, 1917, its





claim, amounting to \$269.01, "representing non-delivery of shipment made from our factory at Mishawaka, Ind. to Cleveland, Ohio. Will you please advise us the present status of this claim and let us know when we may expect settlement of same."

In the letter of September 24, 1917, the plaintiff said:

"We are enclosing herewith our claim as above, amounting to \$269.01, which is filed with you on account of your failure to show delivery of this shipment.

With this claim we are also enclosing original bill of lading together with copy of invoice.

Inasmuch as you have not been able to show delivery up to this time and the shipment was originally made in April, we trust that you will pass this claim for prompt payment and favor us with remittance to cover at an early date."

On March 20, 1918, the defendant wrote the plaintiff as follows:

"Referring to the above claim, presented by you under date of Sept. 24th 1917, under your #59, I would advise you that this shipment arrived at Cleveland, Ohio, under date of May 18th, and consignee was properly notified as no response was received to this notification, shipment was placed in Public Storage, with the Lincoln Fireproof Storage Co., 5700 Euclid Ave., Cleveland, under date of May 22nd, 1917.

Under the circumstances, therefore, I shall be glad if you will kindly arrange with the consignee to take delivery of the shipment, and cancel claim."

On April 2, 1918, the plaintiff telegraphed the defendant that it had released the original bill of lading to the defendant, "Please wire Cleveland reconsigning shipment to us at Chicago with all possible speed." On April 3, 1918, the defendant telegraphed the plaintiff, "Your wire 2nd. Have wired agent Penna Lines Cleveland to reconsign



[illegible]

4622 • J. Neurosci., September 24, 2008 • 28(39):4616–4624

the same conditions as those of the other two, but with the addition of a small amount of water to the mixture.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

1990/1991 as 1989

1. The first of these is the fact that the majority of the population of the United States is now living in urban areas. This is a result of the process of urbanization, which has been going on since the beginning of the 20th century. The process of urbanization is the movement of people from rural areas to urban areas. This is done for a variety of reasons, including the search for better living conditions, the desire for education, and the need for employment. The process of urbanization has led to the growth of large cities and the decline of small towns. This has had a significant impact on the way we live and work.

1. The above information is being furnished to you for your information only. It is not to be used for any other purpose without the express written consent of the Bureau of the Census.

THE FOLLOWING IS A SUMMARY OF THE RESULTS OF THE INVESTIGATION:

shipment to you at Chicago."

On May 16, 1918, the plaintiff wrote the defendant:

"We have your letter of May 1st regarding our claim which was placed with you under date of September 24, 1917. This looks like a very clear case for us and we see no reason why, with the information you have, you cannot pass this claim for immediate payment which we trust you will do."

On May 28, 1918, the defendant wrote the plaintiff and stated that in reference to the plaintiff's claim, it had the matter "under investigation specially with the Penn. Co. at Valparaiso and Cleveland, and everything possible is being done to hurry to a satisfactory conclusion."

On July 18, 1918, the plaintiff wrote the defendant,

"We have had no word from you since May 28, on above claim. This claim is of long standing and is a perfectly clear case, and should be passed for payment at once. Please put this matter through for us promptly."

On August 2, 1918, the defendant replied, advising the plaintiff that the papers in question were undergoing active investigation with its agent at Valparaiso, Indiana, and stated, "I have traced for return and on receipt hope to be in a position to close out satisfactorily."

On August 22, 1918, the plaintiff wrote the defendant, stating that it had received defendant's letter of August 2nd, "and would like to have you advise us if you are not now in a position to make a definite report on this claim." And on August 27, 1918, the defendant acknowledged the receipt of the plaintiff's letter of the 22nd, and wrote as follows:





"in further reference to above claim and in reply beg to advise that we have this matter in hand, specially with the Penn. Co. at Valparaiso, Ind. and everything possible is being done to hurry to a satisfactory conclusion."

On September 28, 1918, the plaintiff wrote to the defendant, acknowledging the defendant's letter of August 27th,

"wherein you advise that this matter is being diligently followed up. Have you anything to report since the date of your letter referred to."

On October 10, 1918, the defendant wrote the plaintiff,

"In reply to your letter of Sept. 28th under your #59 I desire to advise that I wrote Agent Penn. Co. at Valparaiso on August 21st, and have not yet received his report. I am sending a copy of my letter to the Freight Claim Agent of that Road and hope this will be the means of obtaining the necessary information when you have my assurance you will be promptly advised as to settlement."

The evidence, therefore, showed that on September 24, 1917, the plaintiff wrote to the defendant making a claim for \$269.01, stating that it was made on account of the defendant's failure to deliver. In that letter, the plaintiff sent the original bill of lading and a copy of the invoice, and asked, as so much time had elapsed and no delivery had been shown, that the claim be promptly paid. That letter, the defendant immediately acknowledged, but nothing further being done, the plaintiff wrote again on October 29, 1917; and then on March 20, 1918, nearly five months later, and nearly a year after the shipment had been made, the defendant wrote admitting that the shipment arrived on May 18, 1917, and stating that the consignee had been properly notified, but there was no response, and that the merchandise, on May 22, 1917, had been placed in a





public warehouse in Cleveland.

Two weeks later, on April 2, 1918, the plaintiff telegraphed that it had released the original bill of lading to the defendant, and asked the defendant to telegraph Cleveland to reconsign the shipment to the plaintiff. The defendant telegraphed back the next day that it had telegraphed the agent of the Penna. Lines, Cleveland, to reconsign the shipment to the plaintiff at Chicago. Further correspondence passed between the parties, but, seemingly, although the defendant was willing to send back the merchandise, and had given notice to that effect, it could not be found. It is apparent from the evidence that the defendant in some way lost track of the merchandise and was unable to have it returned. It may be that if the evidence showed merely that the defendant had received the merchandise and notified the consignee, who did not respond, that it was entitled to put the merchandise in storage, and that then the burden would be upon the plaintiff to take appropriate steps to have it returned. But the evidence shows here that the plaintiff released the original bill of lading to the defendant, and asked the defendant to reconsign the shipment to the plaintiff at Chicago, and that the defendant acquiesced and sent out a notification to reconsign the shipment accordingly. Quite obviously, therefore, the defendant waived whatever rights it might have had growing out of the fact, if it were a fact, that the original consignee was notified and failed to take out the merchandise; and at the time of its waiver, it assumed the responsibility and obligation of





reconsigning the merchandise, as expressed in its telegram of April 3, 1918.

Inasmuch as the defendant put in no evidence, so that there is nothing to contradict the evidence introduced on behalf of the plaintiff, and as the evidence for the plaintiff tends strongly to show the assumption of an obligation on the part of the defendant to re consign the merchandise to the plaintiff at Chicago, and the further fact that the merchandise was never redelivered, we are of the opinion that the judgment, considering the record as it is before us, is not against the manifest weight of the evidence.

The judgment, therefore, will be affirmed.

AFFIRMED.

O'CONNOR, J. AND THOMSON, J. CONCUR.





138 - 28414

A. NELSON,

Appellee.

v.

JOHN SANDBERG, (Doing business  
as Sandberg's Express and Storage  
Co.),

Appellant.

3857a  
234 I.A. 634  
APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

Opinion filed June 11, 1924.

MR. JUSTICE O'CONNOR delivered the opinion of  
the court.

Plaintiff brought an action against the defendant  
to recover damages by reason of the sale of plaintiff's  
household goods which were stored in the defendant's ware-  
house. There was a verdict in plaintiff's favor for  
\$1,000.00, but, at the suggestion of the trial judge, there  
was a remittitur of \$79.00 and judgment was entered on the  
verdict for the balance of \$921.00, to reverse which the  
defendant prosecutes this appeal.

The record discloses that on August 1, 1921,  
plaintiff's household furniture was placed in storage in  
the warehouse of Hudson & Kjellander and a warehouse receipt  
given to plaintiff. Defendant succeeded to the business of  
Hudson & Kjellander and conducted the warehouse in question.  
The contract for the storage of the goods provided that  
plaintiff pay to defendant \$5.00 per month storage charges  
and the evidence shows that defendant sent him bills each  
month, but that no payment was made; that on March 15, 1922,  
defendant sent plaintiff a registered letter stating, among



100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

100 - 10010

other things, that there was due from the plaintiff to the defendant seven month's storage and cartage charges to March 1, 1932, and that a lien was claimed upon plaintiff's household goods. The letter contained a demand for payment and stated that if the amount was not paid before March 27, 1932, the goods would be advertised for sale and sold at public auction at the warehouse No. 3033 North Clark street on April 17, 1932 at 10:00 A.M. This letter was received by plaintiff on March 16, 1932. Plaintiff testified that a few days after he received this letter he saw defendant and told him that he was unable to pay the amount he owed and at that time requested that he be given more time; that the defendant agreed to do so, stating that the letter was but a "dun"; that nothing would be done toward selling the household goods until defendant notified plaintiff to that effect.

Edwin O. Malt testified for the plaintiff that he was a practicing lawyer in Chicago; that he had practiced his profession for about five years; that during the fore part of April, 1932, he called up the defendant in reference to the sale of the household goods and told the defendant that he represented an estate in which plaintiff was a beneficiary to the extent of about \$3,000.00; that the estate would be closed in about six weeks to two months and he requested the defendant not to sell the household furniture. He further testified that he told the defendant "that in case something comes up so that we couldn't close the estate in a few months I would see that he got it if I had to pay it myself."; that the defendant stated that the letter,



every thing, that there was one thing the plaintiff in the  
defendant never made a strategy and strategy changes in  
March 1, 1902, and that a firm was formed upon plaintiff's  
household goods. The latter mentioned a demand for payment  
and stated that it was made and was made before March 17,  
1902, the date would be admitted by him and said at  
plaintiff's meeting at the residence of, 1000 West 10th Street  
on April 17, 1902 at about 4 P.M. This latter was received  
by plaintiff on March 18, 1902. Plaintiff testified that a  
few days after he received this letter he was contacted and  
told him that he was wanted to pay the amount he owed and  
at that time requested that he be given more time; that the  
defendant agreed to do so, stating that the latter was his  
a thing; that nothing would be done about settling the  
defendant's goods until defendant's liability to him  
was settled.

Again on this occasion at the residence of  
he was a messenger named in Chicago; that he had provided  
his protection for about five years; that during the time  
past at April, 1902, he called on the defendant at the residence  
in the city of the defendant's goods and told the defendant  
that he represented an estate in which plaintiff was a debtor  
liable to the extent of about \$5,000.00; that the estate  
would be closed in about six weeks to ten months and he  
requested the defendant pay to him the defendant's share  
now. He further testified that he told the defendant that  
in case something came up he that he wouldn't allow the  
estate in a few months I would not that he put it in his  
to pay it himself; that the defendant stated that the latter

sent plaintiff in reference to the proposed sale, was merely in the nature of a "dun" for the money due and that defendant would not sell the goods without first getting in touch with the witness.

The defendant testified in his own behalf and denied that plaintiff had requested that the sale of the goods be postponed; that the first time he saw plaintiff was in June, which was about two months after the sale took place, viz: April 17, 1922. He testified that he had a conversation with one Hult on the telephone but that he refused to postpone the sale; that he told Hult the amount due from plaintiff would have to be paid or the sale would take place on April 17, 1922. Other testimony was given by a Miss Hansen, but since there must be a new trial we will not discuss the evidence in detail and have not attempted to give all the testimony of the witness but only such of it as we deem necessary for our decision. The evidence further shows that defendant caused a publication to be made in the Chicago Daily Journal, the first publication being March 30th and the last April 6, 1922. The publication is in the record and shows that there were about sixteen lots of household goods including the plaintiff's to be sold on April 17, 1922 at 10 o'clock at the defendant's warehouse; that a duly licensed auctioneer conducted the sale of all the goods as advertised and plaintiff's goods were sold to one C. Kels for \$47.50; that about two months thereafter plaintiff called and demanded his household goods but was advised that they had been sold on April 17, 1922.





Plaintiff testified as to the value of the various pieces of household goods that were sold, the aggregate value of which was \$915.50. The testimony of the plaintiff was the only evidence given on the question of value. The jury returned a verdict of \$1,000.00. The court required a remittitur of \$79.00 and judgment was entered for \$921.00, as above stated.

We have not discussed the question argued by the defendant to the effect that the verdict was against the manifest weight of the evidence for the reason that there was prejudicial error in giving instructions 8 and 10 complained of by the defendant. Counsel for plaintiff in their briefs state that the defendant is in no position to raise this question because the defendant failed to except to the instructions before judgment was entered as required by sec. 74 of the Practice Act. We think this is a misapprehension of the record. It appears from the record that the court gave the jury eleven instructions and the defendant objected to the giving of them. The record does not disclose at whose request any of the instructions were given. And it is apparent that some of them were given at the request of the defendant and of course he did not object to them. But counsel for plaintiff in their argument show that the two instructions complained of were given at his suggestion.

By instruction 8 the jury were told that before a warehouseman could sell goods stored with him to satisfy his lien, he must comply with certain statutory requirements which required the giving of ten days' notice of his intention to sell; that if such notice is given by the warehouseman,





and thereafter by his acts, words or general conduct he causes the owner of the goods stored to reasonably believe that the sale will not take place, the warehouseman could not thereafter sell the goods to satisfy his lien without again complying with the requirements of the statute which requires the giving of a notice of the sale. This instruction is confusing and inaccurate. It was admitted on the trial that the sale was held in conformity with the law. The question for the decision of the jury in the case was very simple. The only question was whether the defendant had told the plaintiff that the household goods would not be sold until defendant gave plaintiff further notice and the instruction by referring to the provision of the warehouse act and requirement of another notice before sale could be made was misleading and improper.

Instruction 10 was to the effect that if the jury believe from the evidence that plaintiff received the statutory notice that the goods would be sold and that plaintiff and parties acting for him communicated with the defendant and asked for an extension of time and stated "if it was absolutely necessary he would raise the money to pay the storage charges so as to avoid having his household goods sold," and that if the jury believed the defendant stated he would postpone the sale and failed to do so without again notifying the plaintiff, then the verdict should be for the plaintiff. This instruction was highly improper. It in effect told the jury that if Hult told the defendant, as he testified, that if it was absolutely necessary to prevent the sale of the goods on April 17th, he himself would pay the





money to the defendant and that on account of this defendant agreed to postpone the sale and failed to do so, plaintiff could recover. In other words, the jury were told in effect that if Hult agreed to pay the charges to the defendant in case the defendant refused to postpone the sale that it would be binding upon Hult and that the defendant would get his money. Of course, there was no liability on Hult to pay the defendant and he could not be held. The jury might readily believe that the defendant could have obtained all his money without postponing the sale if he had insisted upon it, the payment being made by Hult. Hult's testimony to the effect that he would pay the defendant in case the latter refused to postpone the sale, should not be considered by the jury, except in so far as it was a part of Hult's conversation with the defendant as tending to show that the defendant agreed to postpone the sale and for no other purpose, and the jury should have been instructed to this effect. On the question which the jury were to decide, viz: whether the defendant had agreed to postpone the sale, the jury should have been told in a short, plain and simple instruction that if they believed from a preponderance of the evidence under the instructions of the court, that the defendant had agreed to postpone the sale from April 17th and had failed to do so, then the plaintiff was entitled to recover; but the instructions were so worded that in our opinion they very probably misled the jury.

For the giving of the two instructions, the judgment of the Superior Court of Cook County is reversed and



... to the defendant and that on account of this defendant  
agreed to postpone the sale and failed to do so, plaintiff  
would recover. In other words, the jury was told in effect  
that if Bill agreed to pay his share of the defendant in  
case the defendant refused to postpone the sale that it  
would be binding upon him and that the defendant would pay  
his share. It stated, there was no liability on Bill to  
pay the defendant and he would not be paid. The jury might  
reasonably believe that the defendant would have obtained all  
his money without postponing the sale if he had delayed --  
when it, the payment being made by Bill. Bill's testimony  
is that after he had paid the defendant he was told  
that he should not postpone the sale, should not be concerned  
as to the jury, except in so far as it was a part of Bill's  
manifestation with the defendant as seeking to show that  
the defendant agreed to postpone the sale and for no other  
purpose, and the jury should have been instructed to that  
effect. On the question which the jury was to decide, was  
whether the defendant had agreed to postpone the sale, the jury  
should have been told in a short, plain and simple manner  
that if they believed that a postponement of the sale  
would make the postponement of the sale, that the defendant  
had agreed to postpone the sale then would it be correct to tell  
to say, that the plaintiff was entitled to recover and the  
instructions were so worded that in one sentence they were  
correctly stated the law.

The giving of the first instruction, the last  
word of the defendant that he was concerned in the sale

the cause remanded for a new trial.

REVERSED AND REMANDED.

TAYLOR, P. J. CONCURS;  
THOMSON, J. SPECIALLY CONCURRING:

While I do not agree with all that is said in the foregoing opinion, I concur in the decision, because of the error of the trial court in giving the tenth instruction.



The names mentioned are: Mrs. J. H. Smith.

JOHN H. SMITH

JAMES H. SMITH  
JAMES H. SMITH

With a list of names and addresses.

In the following list, I have given the names of the persons who have been mentioned in the list of names and addresses.

list

169 - 38445

J. W. BUTLER PAPER CO.,  
a corp.,

Appellee,

v.

WILLIAM H. FREUND, sued as  
WILLIAM H. FREUND CO.,

Appellant.

3858a  
234 I.A. 634  
APPEAL FROM

MUNICIPAL COURT  
OF CHICAGO.

Opinion filed June 11, 1924.

MR. JUSTICE O'CONNOR delivered the opinion of  
the court.

Plaintiff brought suit against the defendant to  
recover the price of a carload of paper sold to the defendant  
amounting to \$8018.38. The case was tried before a judge and  
jury and there was a verdict in plaintiff's favor for \$4516.84,  
to reverse which the defendant prosecutes this appeal.

The record discloses that plaintiff was engaged  
in the paper business in Chicago as a jobber and the defend-  
ant in the making of paper labels September 7, 1920, the  
parties entered into an agreement whereby the plaintiff agreed  
to sell and the defendant agreed to buy 40,000 lbs. of a certain  
kind of paper and on the 14th of September plaintiff wrote the  
defendant acknowledging defendant's order for the paper.  
Plaintiff requested defendant to sign and return the letter  
which was accordingly done and it is agreed that this embodied  
the contract entered into by the parties. It provided that the  
price to be paid was that which prevailed at the time the paper  
was delivered. The evidence further shows that plaintiff had  
sold to the defendant on a number of prior occasions a consider-



100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

100-1000

able quantity of paper, but in the view we take of the case it will not be necessary to set forth these prior transactions because they do not materially enter into a decision of the case before us. The evidence further shows that on November 9, 1930 the paper covered by the September order not having been delivered, the defendant wrote plaintiff stating that "Owing to sudden heavy cancellations received by us during the last two weeks, we must ask you to cancel all orders on Litho Label that you have on order for us." Two days later plaintiff replied that this paper was scheduled for delivery during November and had already been made up according to the advice plaintiff had received from the mill and, therefore, plaintiff was unable to cancel the order. Afterwards there were a number of conferences between the parties in reference to the paper, plaintiff contending that it was holding the paper for the defendant and endeavoring to dispose of it to other parties as defendant had requested and that plaintiff through its salesman notified its customers that it had the paper on hand, the paper in the meantime having been received in Chicago during the fore part of November, 1930. There was evidence tending to show that the price of the paper had decreased considerably and that plaintiff was unable to find a purchaser for the paper. It made demands for payment on the defendant which were refused, the defendant taking the position he had cancelled the order and was, therefore, not liable. Several months later, and after the suit was brought, plaintiff sold the paper and on the trial credit was given for the amount which the plaintiff had received on the resale.

At the close of the evidence the court instructed the jury orally, and told them that the question for their





determination was whether the contract entered into for the sale of the paper on September 7, 1930, was cancelled or repudiated by the defendant, and if they found from the evidence that the contract was not cancelled by mutual consent, their verdict should be for the plaintiff for the purchase price of the paper less the amount received by the plaintiff for the paper which it had resold. The court further instructed the jury that if they found the contract had been cancelled that plaintiff was entitled to recover only the amount which represented the difference between the market value of the paper at the date of delivery and the contract price, which amount the court stated had been agreed upon by the parties to be \$435.00. The court further instructed them that in case they found from the evidence the contract had not been cancelled, by agreement of both parties they should find for the plaintiff in the sum of \$4,515.84. These instructions met with the approval of counsel for both parties. No complaint was made on the trial to them, nor is any argument made here that they were improper. The jury returned a verdict in favor of plaintiff for \$4,515.84, thereby finding in effect that the contract had not been cancelled. There is a great deal of argument in the briefs filed by both parties as to the construction of the uniform sales act, but we think all of this argument is not pertinent to a decision of the case. As has been stated, counsel for both parties agreed that the verdict should be for the plaintiff and that if the contract had been repudiated the amount should be \$435.00, but if the jury found that the contract had not been repudiated, the verdict should be for \$4,515.84. No argument is made that the finding of the jury in favor of the plaintiff for the latter amount is against the manifest weight of the evidence



-4-

Defendants was admitted the contract entered into the fall  
 side of the house on September 7, 1934, was admitted by the  
 indicated by the defendant, and it was found from the evidence  
 that the contract was not cancelled by mutual consent, that  
 verdict should be for the plaintiff for the purchase price of the  
 paper from the amount returned by the plaintiff for the paper  
 admitted and received. The court further instructed the jury  
 that if they found the contract had been cancelled that the  
 jury was entitled to recover only the amount which represented  
 the difference between the actual value of the paper at the date  
 of delivery and the contract price, which amount the court asked  
 had been agreed upon by the parties to be \$25.00. The court  
 further instructed that if it was found that the  
 contract was cancelled and not been cancelled by agreement  
 of both parties they should find for the plaintiff in the sum  
 of \$2,500.00. These instructions were given the jury at the  
 request of both parties. No complaint was made as to these  
 instructions, nor is any argument made here that they were  
 the jury returned a verdict in favor of defendant for \$2,500.00,  
 thereby finding in effect that the contract was not cancelled  
 orally. There is a great deal of argument in the record that if  
 both parties as to the cancellation of the contract were not  
 not we think all of this argument is not pertinent to a finding  
 of the case. As has been stated, counsel for both parties  
 agreed that the verdict should be for the plaintiff and that if  
 the contract had been cancelled the verdict should be \$25.00,  
 and if the jury found that the contract had not been cancelled,  
 the verdict should be for \$2,500.00. It appears to me that

and in fact no such argument could be successfully made, because the evidence in the record we think fully warranted the jury in returning the verdict they did. It follows that the judgment of the Municipal Court of Chicago must be and it is affirmed.

AFFIRMED.

TAYLOR, P.J. AND THOMSON, J. CONCUR.



and in fact we have already seen that the  
 evidence is sufficient for the purpose of showing  
 that the defendant is guilty of the crime  
 charged in the indictment.

### CONCLUSION

Very truly yours,  
 J. Edgar Hoover

185 - 38461

ALEXANDER DARGUZIS, by STANLEY  
DARGUZIS, his next friend,

Appellee,

v.

CHICAGO RAILWAYS COMPANY,

Appellant.)

3859a  
234 I.A. 634

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

Opinion filed June 11, 1924.

MR. JUSTICE O'CONNOR delivered the opinion of  
the court.

Plaintiff brought suit against the defendant  
to recover damages for personal injuries and a verdict  
and judgment was rendered in his favor for \$5,000.00.

The record discloses that on January 30, 1914,  
at about 4:45 o'clock in the afternoon plaintiff, a child  
three years and six weeks of age, while crossing Canalport  
avenue near the intersection of Union street in Chicago,  
was struck and injured by one of defendant's street cars.  
There was a former trial of this case where the jury re-  
turned a verdict in plaintiff's favor for \$500.00, but on  
his motion the court granted a new trial, and on the re-  
trial the judgment appealed from was entered. This suit  
was commenced July 13, 1914, and why it has been pending  
so long does not appear. In the ordinary course of liti-  
gation in Chicago, it should have been disposed of long ago.

Canalport avenue at the place in question does  
not run exactly east and west, but a little to the southwest  
and northeast, and it is intersected by Union avenue, a north



1992 = 2000

Journal of Health Politics, Policy and Law

Continued from page 1

1990 2000

14-00000

... ..

and subjected me to a 1000-volt electric shock.

Printed with special permission of the U.S. Navy by the U.S. Navy Press, Washington, D.C.

These points are all made in the following chapters.

THESE ARE THE RESULTS OF THE RESEARCH

...and the other side of the coin is that the more you know about the world, the more you know about yourself.

Downloaded from <http://ajphaphapublications.sagepub.com/> at 12:00 12 June 2015

Received 15 October 1994; accepted 15 November 1994

THE UNIVERSITY OF CHICAGO LIBRARY

about the relative amount of work was obtained. This was

politicar eadit pnt et cto lna .hllf .hf qat .hntwom are

[illegible]

© 2002 Thomson/ISI. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without prior written permission from Thomson/ISI.

and south street. Plaintiff lived with his parents in the premises located at the northeast corner of the street intersection. The father conducted a saloon on the corner and the family lived in some rooms in the rear and upstairs. The main entrance to the building was through a door in the southwest corner of the building. Shortly before the accident plaintiff's mother had told an older child of the family to go to a store on an errand and apparently plaintiff overheard what his mother had said and appears to have gone out through the saloon and through the door at the southwest corner of the building. The older child who started on the errand, as she came out the same door, saw people around a westbound street car, which was standing approximately in front of the saloon.

Defendant operated a double line of street cars in Canalport avenue. There were no street car tracks in Union avenue. The evidence further tends to show that the car in question prior to the accident was being operated westerly at a low rate of speed, about eight miles per hour; that there were some persons standing in Canalport avenue about forty feet east of the intersection and north of the westbound track waiting to board the approaching car; that the car was slowing down; that plaintiff got off the curb, started to cross Canalport avenue and was struck by the car; that the car was immediately stopped and the child was found with his left foot caught by the south wheel of the front truck or some other part of the car in front of that wheel. He was lying between the two street car tracks. The car was then backed up, and the child was taken to a corner drug store for the purpose of receiving surgical attention. He was





then taken to his home across the street where he was attended by a physician, and it was found that the toes of his left foot, except the little one, were crushed and the calf of his right leg was also injured. Since there must be a retrial of the case on account of a faulty instruction, we will not discuss the evidence further, but we think whether plaintiff made out a case, was not a question of law, but one of fact for the jury, and therefore, the court did not err in refusing to direct a verdict for the defendant.

1. At the request of the plaintiff the court gave the jury instruction 3, which is as follows: "The jury are instructed that, if they believe from the evidence that the plaintiff at the time of the accident was a child between the age of three and four years, then he cannot, because of his tender years, be guilty of, or be charged with, carelessness or negligence in respect to the accident in this case, so as to relieve at all any want of due care on the part of the defendant, so that, if the jury further believe from the evidence that the accident causing the injury to plaintiff was due to the want of due and ordinary care by the defendant, then you must find a verdict for the plaintiff." The objection urged to this instruction by the defendant is that it permits a recovery upon evidence of negligence not alleged in the declaration. Of course, the instruction should have told the jury that plaintiff could only recover for such negligence as was alleged in the declaration and proved by the evidence. It is not every erroneous instruction that will warrant a reversal of a judgment, but in this case where the question of liability was a close one we cannot, under the decisions of the Supreme Court, allow the judgment to stand.





A similar instruction has been held erroneous in Hackett v. Chicago City Ry. Co., 235 Ill. 116; Ratner v. Chicago City Ry. Co., 233 Ill. 169; Lyons v. Ryerson & Co., 242 Ill. 409; Griffenban v. Chicago Rys. Co., 299 Ill. 590; Herring v. E. & A. R. R. Co., 299 Ill. 214.

In the Hackett case plaintiff who was between six and seven years of age brought suit to recover for personal injuries. An instruction similar to the one under consideration was given and it was held to be erroneous and the judgment was reversed for that and other reasons. The court there pointed out that the instruction first appeared in the case of Chicago City Railway Co. v. Tucky, 136 Ill. 410, where it was contended that the instruction was erroneous because whether the child could be guilty of contributory negligence was a question of fact and not law as stated in the instruction. The court held in the Tucky case that the instruction was not subject to that objection and affirmed the judgment. In the Hackett case, the court said (p.131) "that holding had nothing to do with the question here presented. In Ratner v. Chicago City Railway Co., 233 Ill. 169, an instruction was given for the plaintiff based on the hypothesis that the plaintiff was in the exercise of ordinary care and caution for his own safety, and advising the jury further, that if they believed, from all the evidence in the case 'that the plaintiff was injured by such collision, and that the defendant \* \* \*, could have avoided such collision by the exercise of the highest degree of care consistent with the practical operation of the road, then you should find the defendant \* \* \* guilty.' That instruction is identical with the one in the case at bar so far as the ques-





tion now under consideration is concerned. In the Ratner case the instruction was held bad because it did not limit the negligence of the defendant which would warrant a recovery to that charged by the declaration, and it was further held that the instruction was not cured by other instructions which did confine the right of recovery to the proof of negligence charged by the declaration." The court further held that although there was no evidence tending to prove any negligence on the part of the defendant except that which was charged in the declaration that fact was immaterial and said (p.133) "Appellant insists that there was evidence which a jury would regard as tending to prove still other negligence not charged by the declaration. Whether this is true we deem it unnecessary to determine. The Ratner case must be regarded as controlling."

And in ruling on an instruction that did not limit the right of recovery to the negligence charged in the declaration, the court said in the Griffenhan case, (p. 505) "It is elementary that recovery can only be had upon the negligence charged in the declaration (Ratner v. Chicago City Ry. Co., 233 Ill. 169; Hackett v. Chicago City Railway Co., 235 Id.116.)".

Counsel for plaintiff does not contend that the instruction is correct, but his position seems to be that defendant should not be permitted to make such objection in this court because the objection was not specifically pointed out on the trial. And in support of this cites two cases from the U.S. Supreme Court and two of the Supreme Court of this state. The practice in the Federal courts and also in the State Courts of Illinois when the Illinois opinion referred to was handed down





(Leish v. Hodges, 4 Ill. 15) was to charge the jury orally and objection to such charge was required to be made before the jury retired. That practice does not now exist in this state. Section 73 of the Practice Act provides that the instructions shall be in writing and section 74 that it is sufficient if the objection is made to instructions at any time before final judgment. This has long been the established practice in this state. The objection of the defendant was sufficient. Collins Ice Cream Co. v. Stephens, 182 Ill. 200; Mady v. Condit, 185 Ill. 234.

The defendant further contends that the court erred in refusing instruction No. 1, by which it was sought to tell the jury that while they were the judges of the credibility of the witnesses, they had no right to disregard the testimony of an unimpeached witness sworn on behalf of the defendant simply because such witness was an employee of the defendant; but that it was the duty of the jury to receive the testimony of such witnesses in the light of all the other evidence thereon as they would receive the testimony of other witnesses," and to determine the credibility of such employee by the same principles and tests by which they determine the credibility of other witnesses."

It has been held that the giving of a similar instruction in a personal injury case against the street car company was not improper. Roberts v. Chicago City Ry. Co., 262 Ill. 228; Clears Street Ry. Co. v. Rollins, 95 Ill. App. 497; same case, 195 Ill. 219; Harley v. Taugherty, 174 Ill. 582; Bennett v. Chicago City Ry. Co., 243 Ill. 420.

In the Roberts case the question of liability was





to be determined from the conflicting evidence given by a witness who stood on the street curb and saw the accident and the motorman of the car. The court instructed the jury that they might consider the relation existing between any witness and either party, "and say interest the witness might have in the result of the suit, in determining the weight which ought to be given to such witness." The court then said that it was always proper to consider the interest which a witness may have in the result of the suit, but that the motorman who testified had no interest in the result of the suit, since if there was a judgment for plaintiff and against the street car company this would establish no liability against him and continuing the court said (p.232): "The relation of employer and employee existed between the motorman and defendant but no witness is to be discredited simply because he is employed by a party to the suit (Cigare and Province Street Railway Co. v. Rollin, 195 Ill. 219). The testimony of an employee is to be treated the same as that of any other witness, and if he appears to be fair and truthful he is not to be discredited merely because he works for wages for a party to the suit. A similar instruction was regarded as incorrect, but not requiring a reversal in Bennett v. Chicago City Ry. Co., 243 Ill. 430, because it was obvious in that case no harm resulted to the defendant."

In the Rollin case which was a suit to recover damages against the street car company, the court instructed the jury that they were the judges of the credibility of the witnesses, but had no right to discredit the testimony of an employee witness sworn on behalf of the defendant simply because he was an employee of the defendant. But that it was the





duty of the jury to receive the testimony of such witness in the light of all the evidence "the same as they would receive the testimony of any other witness." The court modified this instruction by adding that the jury were to test the credibility of such employee the same as they would any other witness "in the employ of an individual litigant." There was another instruction advising the jury that in determining the credibility of the witnesses, they might take into consideration, among other things, the relation of the witness testifying for either plaintiff or the defendant, and the interest he might have in the result of the suit. The court held that the instruction as offered and as modified stated a correct proposition of law and stated that the testimony of employees of litigants should be weighed and tested by the same rules as applied to other witnesses, and held under the two instructions mentioned, there was no error in refusing the instruction as offered. This case was reviewed by the Supreme Court, where it was held that it was error for the court to modify the instruction, but on account of the other instruction given on the question of determining the credibility of the witnesses, it was further held that the modification did not warrant a reversal of the judgment.

In the Donley case an instruction was given to the effect that if any witness was in the employ of either plaintiff or defendant, such relation might be considered together with any other relations which existed between such witness and a party to the suit, and that such interest, if any, might be considered by the jury in determining the weight to be given



any of the law to reveal the contents of this letter  
in the light of all the evidence, the case as they stand  
relative the propriety of any other remedy, the court  
advised that testimony by saying that the jury were  
to read the competency of each witness the same as they  
would say about witness in the matter of an individual  
testimony. There was another instruction contained in  
the jury that in determining the competency of the witness,  
they might take into consideration, among other things,  
the relation of the witness testifying for either plaintiff  
or the defendant, and the answer in which was in fact  
said of the jury. The court said that the instruction as  
drafted was as modified stated a correct proposition to be  
was stated that the propriety of competency of witnesses should  
be weighed and tested by the same rules as applied to other  
evidence, and that again the two instructions provided, there  
was no error in including the instructions as stated. That  
more was required by the evidence, there is not held that  
it was error for the court to modify the instructions, but as  
members of the other instructions given in the matter of  
determining the competency of the witness, it was further  
held that the modification was not a reversal of the  
verdict.

In the matter of the testimony was given in the  
evidence that it was relevant and in the matter of other evidence  
on testimony, some questions arose in regard to the  
any other evidence which might be relevant and it  
pertains to the facts, and that was held. It was held that

to the testimony of such witness. The court held that there was no substantial error in the instruction and said: "It is always proper for the jury to consider the interest, if any is shown by the evidence, which a witness has in the result of the suit in determining his credibility."

In the Bennett case the jury were instructed that they might consider the fact that any witness had been or was in the employ of the plaintiff or defendant in determining the weight that ought to be given to the testimony of such witness. And it was held, following the Douley case, that there was no substantial error in giving the instruction although it was inaccurate. In the case of Boyle v. Albany Ry. 58 N.Y. Supp. 802, Judge Parker, in delivering the opinion of the court, said, in speaking of employee witnesses (p. 804): "The personal interest which such a relation might possibly create is not to be overlooked in weighing their evidence, but that their statements are to be utterly discredited or disregarded because of that fact, is a conclusion which jurors are much too ready to adopt, and which neither reason nor experience warrants." In the instant case if the defendant were held liable, it would be primarily on account of the negligence of the motorman who testified in its behalf and as Judge Parker said, "this relation ought not to be overlooked." The refused instruction has repeatedly been approved by our Supreme Court. Under these decisions, the giving of the instruction may not be complained of. While, taken literally, the instruction may be said to be a correct statement of the law, it is our opinion that, unless it is worded more clearly and guardedly than was the instruction submitted, it is likely to be misleading for the reasons given in the opinion



in the building of such a structure. The object was to have a  
was an excellent view of the interior and walls. The  
in large part of the city in general the interior. It  
any is shown by the exterior, which is shown in the  
results of the work in determining the conditions.

[illegible]

by Judge Parker.

For the giving of instruction 3, on behalf of plaintiff, the judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

TAYLOR, P.J. AND THOMSON, J. CONCUR.



of the same

the same as the one in the first part of the report, but the same as the one in the second part of the report.

the same as the one in the first part of the report

the same as the one in the first part of the report

353 - 38529

JOHN B. SCHARNACH,

Appellant,

v.

MARGARET SCHARNACH,

Appellee.

38602  
APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

234 I.A. 634

Opinion filed June 11, 1924.

MR. JUSTICE O'CONNOR delivered the opinion of the court.

By this appeal John B. Scharnach seeks to reverse an order entered by the Circuit Court of Cook County modifying a decree of divorce whereby the custody of the plaintiff's minor child was taken from him and awarded to the defendant, the child's mother.

The record discloses that on the 19th of December, 1907, the parties to this suit were married; that as a result of such marriage a son Julius was born to them; that several years thereafter Margaret Scharnach filed her bill for separate maintenance and her husband John B. Scharnach filed a crossbill for a divorce, charging adultery. The matter came on for hearing and after a hearing the Chancellor stated he would dismiss the bill and enter a decree of divorce under the crossbill; that he then called the parties into his chambers and suggested that no further action be taken until the two years had elapsed since the parties had separated and that then the husband could file a bill for divorce charging desertion. Apparently the suggestion of the court was acted upon and on January 8, 1930, the husband filed his bill for divorce against the defendant.



100 - 100

100 - 100

100 - 100

100 - 100

100 - 100

100 - 100

Opinion filed June 11, 1884.

MR. JUSTICE CHASE delivered the opinion of the court.

The court.

By this opinion, which is heretofore known as the

an order entered by the court in the case of the

ing a decree of divorce whereby the custody of the children

shall be given to the father, and the mother to the mother, the

mother's mother.

The record discloses that in the year of 1880,

1880, the parties to this case were married, and as a result

of such marriage a son, William, was born in 1881, and

years thereafter, William was married, and in 1884, the mother

maintained and her husband, John, in 1884, filed a petition

for a divorce, charging adultery. The record shows that on

and after a hearing the divorce was granted, and the mother

the bill and asked a decree of divorce, which was granted.

that he then asked the mother to take the children and support

them by further asking the mother to take the children and

allow the mother to support them, and that the mother

filed a bill for divorce, charging adultery. The record

discloses that the court was asked to grant the divorce, and

the mother filed a bill for divorce, charging adultery.

charging her with desertion, alleging the birth of their son Julius and requesting that the custody of the child be given to him. The defendant filed her answer. The matter came on for hearing before Judge Finckney and a decree was entered awarding the complainant a divorce on the ground of desertion, and that he had the care and custody of their son Julius, subject to the visitation by the mother at stated times. This decree was entered March 3, 1930. It further appears that the child had been taken care of by the father and has not lived with his mother since they separated, which was about the 7th of January, 1918; that at the time of the hearing of the divorce case, February 18, 1930, Julius was then six years old and was living with a widow who had two young children of her own, having been placed there by the father. Julius was then attending school and was in the first grade. It further appears from the record that although the child had been in the father's custody since the parents were separated the mother had called practically every Sunday to see him.

After the divorce had been granted, a little more than two years, the defendant filed her petition on April 25, 1932, praying that the decree of divorce be modified and the custody of Julius awarded to her. The petition set up (inter alia) that on the 24th of September, 1917, her then husband filed a bill for divorce in the Circuit Court of Cook County, charging the petitioner with adultery and that subsequently on November 9, 1917, the bill was dismissed on motion of the complainant; that on January 27, 1918, she filed her bill for separate maintenance in the Circuit Court against her then husband, charging him with extreme and repeated cruelty; that subsequently the defendant filed his crossbill praying for a



showing her with discretion, allowing the wife to feel  
 the father and suggesting that the mother of the child  
 be given to him. The defendant filed an answer. The answer  
 came on for hearing before Judge Wilkins and a decree was  
 entered granting the maintenance a divorce on the ground of  
 desertion, and that he had the care and custody of their son,  
 William, subject to the visitation of the mother on stated days.  
 This decree was entered March 1, 1927. It further decreed  
 that the child had been taken care of by the father and was  
 and lived with his mother since they separated, which was about  
 the 1st of January, 1926; that at the time of the hearing of  
 the divorce case, February 12, 1927, William was then ten years  
 old and was living with a friend who had been living with him  
 for some time, having been placed there by the father. William was  
 then attending school and was in the third grade. It further  
 appeared from the record that although the wife had been in the  
 father's custody since the divorce was granted the mother  
 had visited William every Sunday for six months.

After the divorce had been granted, a letter was  
 then two weeks, the defendant filed an answer on April 25,  
 1927, stating that the decree of divorce be nullified and the  
 custody of William awarded to him. The petition for the nullification  
 filed on the 25th of September, 1927, was then returned.  
 filed a bill for divorce in the Circuit Court of Cook County,  
 showing the partnership with wife/daughter and their relationship as  
 November 9, 1927, the bill was dismissed on motion of the defendant.  
 Plaintiff filed on January 27, 1928, the bill for nullification  
 against defendant in Cook County Court against the State

divorce on the ground of adultery, setting up the same facts as those set up in his bill for divorce, which was dismissed on his motion on November 3, 1917; that after issue was joined and on the 15th of September, 1919, her bill was dismissed for want of equity. It was further alleged that the Chancellor stated that there were no grounds for divorce on account of adultery and on February 13, 1920, dismissed the crossbill. The petition further set up that a few days after the decree of divorce was awarded on the ground of desertion, the complainant entered into marriage with one Cleo Clancy at Crown Point, Indiana; that they immediately returned and lived as husband and wife in Chicago; that since the alleged marriage Julius has been living with his father and his alleged wife and her two young children; that Julius was not properly taken care of and that on one occasion the stepmother struck him with a razor strop leaving marks upon his body. The petition also set up that Julius has been neglected and not properly taken care of; that she was able to take care of him; that she was now occupying a house and had sufficient money to give him proper and sufficient care, and that at no time was there any grounds for the charges of adultery made against her by her former husband.

On June 3, 1923, the matter came on for hearing and after hearing the testimony of witnesses in open court the Chancellor refused to modify the decree of divorce and dismissed her petition. Afterwards on November 15, 1923, upon leave of the court, the mother again filed her petition against her former husband, praying that the decree of divorce be modified and that the custody of Julius be awarded her.





This petition contained substantially the same allegations as those in the prior petition filed by her, except the additional allegation that since the 30th of September, 1923, she had not been in the company of one Austin who was named as the correspondent by the husband in his bill for divorce charging adultery. The matter came on for hearing before the Chancellor and on December 30, 1923, the court entered the order appealed from awarding the custody of the child to his mother. The court after hearing evidence found that both the father and mother of Julius were fit and proper persons to have the care and custody of him; that since the entering of the decree for divorce, the status and position of the mother had changed; that she had a suitable home for the child and was now a fit and proper person to have the care and custody of him, and that it was for the best interest of the child that he reside with his mother.

From the evidence it appears that the mother resides at 1516 Hudson avenue, keeping house for one Cornelius Fraeder, who conducts what is known as a soft drink parlor; that she is getting \$10.00 per week from Fraeder; that they live in the second flat which consists of six rooms in a two flat building. The petitioner testified that there was no liquor in the flat where she lived; that Fraeder had a child five years old whom she was taking care of; that the last time she saw Austin was September 25th at Fraeder's home. She further testified that there was no material change in her condition since the hearing on the first petition she filed for a modification of the decree, except at the present time she was not keeping company with Austin; that no charge of adultery had ever been proven against her in connection with Austin. She further





testified that at one time Julius told her that his stepmother asked him when he was going to get out of her family. The son Julius who was about eight years of age testified that at one time the stepmother told him to get out of the house; that his father and stepmother were both good to him and that his mother treated him kindly; that he wanted to go and live with his mother. The evidence further discloses that the father was employed as a motorman for the Surface Lines and had been engaged in that work for about ten years; that he lived at 4515 Kenton avenue which is located in the northwest section of the city. The father testified that Julius never made any complaint to him about being mistreated by the stepmother; that they all appeared to get along well together; that about October 1st, when the mother brought Julius home he saw Austin with her; that he supplied Julius with food and clothing; that in the summer he took him to the Forest Preserve; that Julius attended the public schools and goes to church Sundays.

One Mike Flannert who lived at 1512 Hudson avenue testified for the defendant that he lived next to the Praeder apartment and could see into it through the window; that sometimes between ten and twelve o'clock at night there was a great deal of noise in the Praeder apartment, singing and whistling; that he saw drinking there; that he never saw Julius' mother drunk, but that she was "awful noisy"; that he saw bottles and glasses on the kitchen table. This witness admitted on cross-examination that he had had trouble with the petitioner.

One Anna Koscher testified for the defendant that she had lived in the first apartment of Praeder's building; that she had taken care of Praeder's child for about 3½ years;





that she saw the petitioner there. She further testified to the effect that there was improper relations between the petitioner and Praeder. On cross examination she admitted that she had had trouble with the petitioner. The petitioner was not called in rebuttal and did not refute any of the testimony given by the witnesses Plannert and Koscher.

This is substantially all of the evidence in the record. We think the finding of the Chancellor to the effect that the status and the position of the petitioner had substantially changed since the entering of the decree, and that it was for the best interest of the minor child that he reside with his mother, is not sustained by the evidence. It was only about six months prior to the entering of the order complained of that the Chancellor refused to modify the decree of divorce; and practically the only change in the petitioner's condition that took place during those six months was that she had ceased her relation with Austin. We think the evidence of the petitioner herself shows that such was not the case, because she testified she had not seen Austin since sometime in September, which was only about six weeks before the petition was filed. The defendant testified that he had seen them together about the first of October, shortly before the petition was filed. But in any event, we think the record discloses that it is for the best interest of the child that he remain with his father. The evidence shows that the father is maintaining a suitable home on the northwest section of the city, and has apparently taken such care of the child as is usual in such a case. He is a temperate man and has been working for ten years for the same company; appears to be very fond of the boy and the child is



[illegible][illegible]

likewise found of the father. The evidence shows that the home to which the petitioner desired to bring the boy was not all that it should be, as it appears from the evidence above set forth.

We are, therefore, of the opinion that the Chancellor erred in modifying the decree and the order appealed from is reversed and the cause remanded with directions to dismiss the petition.

REVERSED AND REMANDED WITH DIRECTIONS.

TAYLOR, F. J. AND THOMSON, J. CONCUR.



licensee to use the same. The licensee shall not  
 transfer the license to any other person or  
 use the same for any other purpose than that  
 for which it was issued. The licensee shall  
 not use the same for any other purpose than  
 that for which it was issued.

It is the policy of the State to encourage  
 the use of the same for the purpose of  
 promoting the health and safety of the  
 people of the State. The State shall  
 not use the same for any other purpose  
 than that for which it was issued.

It is the policy of the State to encourage

the use of the same for the purpose of

263 - 28539

OTTO E. GEORGI,

Appellee,

v.

ANDE. KOCH, INC.,

Appellant.)

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

386/a  
234 I.A. 634

Opinion filed June 11, 1924.

MR. JUSTICE O'CONNOR delivered the opinion of the court.

Plaintiff brought an action of attachment against the defendant claiming that there was \$500.00 due to him from the defendant. Two parties were served as garnishees, one of them answered that he held in his possession \$93.84 belonging to the defendant. The case was tried before the court without a jury. The attachment was sustained and judgment entered in favor of the plaintiff for \$48.63. The judgment also went against the garnishee for the amount that he admitted was due, and it was ordered that after plaintiff was paid his judgment, together with costs, the balance be paid to the defendant, to reverse the judgment the defendant prosecutes this appeal.

The case went to trial on plaintiff's amended statement of claim in which it was alleged that plaintiff claimed there was due him from the defendant for commissions \$500.00 under a written contract entered into between the parties on July 14, 1920; that the contract provided that in consideration of plaintiff visiting defendants factory which was located in Germany, and in consideration of plaintiff instructing and advising the defendants in reference to the manufacture of com-





certinas which the defendant was manufacturing, plaintiff was appointed "sole and exclusive sales agent for the United States and that he was to be paid 10 percent on the sales of all concertinas sold in America. It was further alleged that plaintiff visited defendant's factory in Germany and instructed them in the manufacture of concertinas; that defendant has sold a large number of concertinas in America, but had failed to pay plaintiff his commission of 10 percent on such sales.

The evidence tends to show that after plaintiff had gone to Germany and given instructions to the defendant, he returned to this country and sold concertinas for the defendant, most of them appeared to have been purchased by himself direct. The evidence further tends to show that there was some disagreement between the parties and on October 28, 1931, defendant wrote plaintiff a letter stating that the contract of July 14, 1930 was cancelled and no longer in force. To this letter the plaintiff replied insisting that the contract was not cancelled, but was still in force and effect. It seems to be agreed by the parties that the court found the amount of sales made by the plaintiff prior to October 28, 1931. On this sum the court figured 10 percent commission and after deducting \$150.00 which sum had been advanced by the defendant to the plaintiff, entered judgment for the balance or \$46.63 in favor of the plaintiff, and there is no contention made that these figures are incorrect. At the close of the case, counsel for the defendant submitted what they designated as seven findings of fact and six propositions of law, all of which the court refused to hold.

The argument is made by both parties as to whether the contract of July 14, 1930 was cancelled. In fact this is





substantially the only argument made. We think this argument is not pertinent to the question before us for decision. Whether the contract was cancelled or not is immaterial, since plaintiff is not seeking to recover any commission for any sales made after the date the defendant wrote his letter, stating that the contract was cancelled. So that whether or not the contract was cancelled would in no way effect plaintiff's right to recover his commissions on sales made prior to October 28, 1931. A further argument seems to be made by the defendant that since some of the sales made to plaintiff himself were at a 25 percent discount, he was not entitled to a commission on such sale. The contract provides that the plaintiff is to be paid 10 percent commission on sales made and we see no reason why plaintiff was not entitled to his commission on the price at which the articles were sold.

The so-called findings of fact and propositions of law submitted to the trial judge went to the question as to whether the contract had been cancelled and none of them in any way effected the question for decision and it is apparent for that reason the court refused all of them.

The judgment of the Municipal Court of Chicago is affirmed.

AFFIRMED.

TAYLOR, P.J. AND THOMSON, J. CONCUR.



consequently the only way to proceed is to  
 is not possible in the present state of the law, because  
 the contract was made by the company, and the company  
 is not bound to observe the contract for any reason.  
 After the date the contract was made, the company  
 contract was made, and the company is not bound to  
 the contract would be in the same position as if it  
 were the contract was made by the company, and the  
 A further question arises as to the validity of  
 since none of the parties to the contract were  
 parties thereto, and it is not possible to  
 on each side, the contract is void, and the  
 is to be held to prevent recovery on the contract, and  
 no person who has signed the contract is  
 on the part of either party.

The so-called doctrine of the company is  
 of law applied to the fact that the company is  
 in the contract, and the contract is void, and  
 is not to be held to prevent recovery on the contract, and  
 was the only person who signed the contract.

The contract is void, and the company is  
 not bound to observe the contract for any reason.  
 After the date the contract was made, the company  
 contract was made, and the company is not bound to  
 the contract would be in the same position as if it  
 were the contract was made by the company, and the  
 A further question arises as to the validity of  
 since none of the parties to the contract were  
 parties thereto, and it is not possible to  
 on each side, the contract is void, and the  
 is to be held to prevent recovery on the contract, and  
 no person who has signed the contract is  
 on the part of either party.

221 - 28557

CHARLES A. DAVEY,

Appellee,

v.

AMERICAN DISCOUNT COMPANY,  
a corp.,

Appellant.)

3862a  
234 I.A. 635

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed June 11, 1924.

MR. JUSTICE O'CONNOR delivered the opinion  
of the court.

Plaintiff brought suit against defendant claiming that there was a balance of \$4375.00 due him on a quantum meruit for services which he had rendered the defendant. There was a verdict and judgment in favor of plaintiff for \$2475.00, to reverse which the defendant prosecutes this appeal.

The record discloses that plaintiff was employed as manager of the defendant company from February 1, 1920, to September 15, 1920, a period of 7½ months, and plaintiff's contention was that it was agreed that he should draw a salary at the rate of \$5,000.00 per year and in addition, if the business proved profitable, he was to be paid such additional compensation as might be agreed upon; that the amount he was to receive as additional compensation was never agreed upon and therefore, he was entitled to be paid what his services were reasonably worth; that they were reasonably worth \$7500.00 of which he had been paid \$3125.00, leaving a balance of \$4375.00. On the other hand the defend-



EX - 100

CONVICTED BY COURT

RECEIVED

RECEIVED BY COURT

RECEIVED

2011/0325

Opinion filed June 11, 1984.

RECEIVED BY COURT

RECEIVED

RECEIVED BY COURT

RECEIVED BY COURT

RECEIVED BY COURT

RECEIVED BY COURT

RECEIVED BY COURT

RECEIVED

RECEIVED BY COURT

RECEIVED BY COURT

RECEIVED BY COURT

RECEIVED BY COURT

RECEIVED BY COURT

RECEIVED BY COURT

RECEIVED BY COURT

RECEIVED BY COURT

RECEIVED BY COURT

RECEIVED BY COURT

ant's position was that plaintiff was employed at a salary of \$5,000.00 per year, and that it was further agreed that if the business was profitable, the defendant would pay plaintiff in addition to the \$5,000.00 such further sum as might thereafter be agreed upon; that there was never any agreement afterwards, and, therefore, plaintiff was only entitled to receive the amount which he was paid.

Plaintiff offered evidence tending to support his contention and the defendant produced a number of witnesses who gave testimony that would sustain its position. The jury found in favor of the plaintiff and the defendant argues that such findings is against the manifest weight of the evidence. We have carefully considered the evidence and are clearly of the opinion that if the record was otherwise free from error, we would not be warranted in disturbing the finding of the jury, but since the judgment must be reversed for other reasons, we will refrain from discussing the evidence, except in so far as it may be necessary in stating the reasons for our decision.

Plaintiff contends that the court erred in ruling on the admission and exclusion of evidence - (1) We think there was no error in the ruling of the court in permitting plaintiff and the witness Russell to give their opinion as to the reasonable and customary value of the services rendered by plaintiff, nor in overruling the defendant's objection to questions put to the witness Schweitzer. The evidence tended to show that plaintiff and Russell had sufficient experience to warrant them in giving their opinions as to the value of the



and a position was taken against the evidence as a whole  
of \$2,500.00 per year, and there is no reason why that  
at the present time available, the defendant would pay  
plaintiff in addition to the \$2,500.00 per year. There was  
an offer of judgment by the defendant to the plaintiff for  
damages, attorneys' fees, and costs, which was refused by the  
plaintiff in writing the amount which he was paid.

Plaintiff's Motion for Judgment

His Honor and the defendant entered a stipulation of facts  
on the facts of the case which are as follows. The  
jury found in favor of the plaintiff on the following issues  
that each finding is against the defendant and in favor of the  
plaintiff. The jury found that the defendant was liable for the  
amount of the judgment entered by the court and that the  
plaintiff was entitled to the costs of the suit and that the  
plaintiff was entitled to the interest on the judgment from the  
date of the judgment until the date of payment. The jury  
found that the defendant was liable for the amount of the  
judgment entered by the court and that the plaintiff was  
entitled to the costs of the suit and that the plaintiff was  
entitled to the interest on the judgment from the date of the  
judgment until the date of payment. The jury found that the  
defendant was liable for the amount of the judgment entered by  
the court and that the plaintiff was entitled to the costs of  
the suit and that the plaintiff was entitled to the interest  
on the judgment from the date of the judgment until the date  
of payment.

Plaintiff requests that the court enter judgment in his  
favor on the following issues - (1) that the  
defendant was liable for the amount of the judgment entered by  
the court and that the plaintiff was entitled to the costs of  
the suit and that the plaintiff was entitled to the interest  
on the judgment from the date of the judgment until the date  
of payment. The jury found that the defendant was liable for  
the amount of the judgment entered by the court and that the  
plaintiff was entitled to the costs of the suit and that the  
plaintiff was entitled to the interest on the judgment from the  
date of the judgment until the date of payment. The jury found  
that the defendant was liable for the amount of the judgment  
entered by the court and that the plaintiff was entitled to the  
costs of the suit and that the plaintiff was entitled to the  
interest on the judgment from the date of the judgment until the  
date of payment.

services rendered by plaintiff. What weight the jury would give to the opinions is not a question of law. For the defendant the witness Schweitzer testified, after qualifying himself as an expert, that in his opinion the services rendered by plaintiff to the defendant were reasonably worth \$75.00 to \$100.00 per week. On cross-examination he was asked if he was not aware that the person who succeeded plaintiff as manager of the defendant company a few days after plaintiff had severed his connection as defendant's manager, received a salary of \$600.00 per month, plus 2 percent of the profits and the use of an automobile. This question was objected to, but the objection was overruled. In this we think the court erred because this matter was entirely immaterial. (2) Complaint is also made that the court erred in overruling defendant's objection and in permitting plaintiff to testify as to what his earnings had been for four or five years immediately prior to the time he was employed as manager of the defendant. We think the point is well taken. The only question on this phase of the case was as to what was the reasonable value of the services rendered by the plaintiff. (3) The defendant also complains that the court erroneously admitted over its objection a letter written by the president of the defendant company to plaintiff about a month after the plaintiff ceased to work for the defendant as manager. The letter was as follows: "Your letter received and at the Board meeting of the American Discount Company, held today, the matter of your claims was thoroughly discussed by all the members. If you are going to be in Chicago soon, would be pleased to have you call and go



business conducted by the company. The company was organized  
 would give to the company in the opinion of the court, the  
 the company was organized for the purpose of conducting  
 conducting business as an agent, and in the opinion of the  
 business conducted by the company as an agent, and in the opinion of the  
 only agent of the company as an agent, and in the opinion of the  
 he was acting as an agent of the company as an agent, and in the opinion of the  
 would himself as an agent of the company as an agent, and in the opinion of the  
 this agent himself as an agent of the company as an agent, and in the opinion of the  
 the company, received a salary of \$10,000 per year, and in the opinion of the  
 a contract of the company and the use of an agent, and in the opinion of the  
 company was organized for the purpose of conducting business as an agent, and in the opinion of the  
 in that he was the only agent of the company as an agent, and in the opinion of the  
 directly immediate. (2) Company is also an agent of the  
 agent of the company as an agent, and in the opinion of the  
 agent himself is directly as to the company and in the opinion of the  
 that the use of the company is directly as to the company and in the opinion of the  
 was organized as an agent of the company, and in the opinion of the  
 is not direct. The only agent of the company is the company and in the opinion of the  
 was as to the use of the company as an agent, and in the opinion of the  
 agent of the company. The company is also an agent of the company and in the opinion of the  
 that the use of the company is directly as to the company and in the opinion of the  
 agent of the company as an agent, and in the opinion of the  
 directly as to the company as an agent, and in the opinion of the  
 for the company as an agent. The company was an agent of the company and in the opinion of the  
 "The company received and is now acting as an agent of the company and in the opinion of the  
 although company, both being, the agent of the company and in the opinion of the  
 directly immediate by all the agents. It was organized for

over the matter personally with me, as I am very desirous of arriving at an amicable settlement with you." Plaintiff's position is that this letter was properly admitted in evidence, because it was in the nature of an admission that the defendant still owed the plaintiff for his services. We think the letter should not have been admitted. There is no admission in it to the effect that the defendant was still indebted to the plaintiff, because it might well be that the defendant's contention was that it had paid up in full, and could convince plaintiff of this fact upon discussing the matter with him. (4) We think there was no error in the ruling of the court in permitting plaintiff to show the amount of business done by the defendant while plaintiff acted as its manager, because plaintiff's evidence was to the effect that the amount he was to receive in addition to the \$5,000.00 would depend upon whether the defendant's business was conducted at a profit. (5) Nor do we think there was any error in the ruling of the trial judge in refusing to admit in evidence the vouchers offered by the defendant, since the evidence failed to show that plaintiff knew anything about them. (6) So also the ruling of the trial judge was erroneous in sustaining an objection to a question asked by counsel for the defendant on cross-examination of the witness Russell. It would have been proper to have cross-examined this witness tending to show that he was biased on account of his being discharged by the defendant, but it was improper to attempt to do so by showing that the former president had embezzled defendant's money.

Complaint is also made by the defendant to instructions 2 and 3 given at plaintiff's request. By instruction 2,





the jury were told that if they believed from all the evidence that no definite contract price was agreed upon between the parties as to the compensation plaintiff was to receive, then they should allow plaintiff such compensation for his services as they believed from the evidence he was entitled to, after deducting whatever sum he had already received. This instruction was wrong, because it did not require the jury to believe from a preponderance of the evidence that the compensation had not been agreed upon, and further that the plaintiff was not entitled to receive such compensation as the jury believed he was entitled to. He was only entitled to receive such sum as his services were reasonably worth. Instruction 3 complained of was to the effect that unless the defendant had proved a valid contract between the parties under which the services sued for were rendered, then the plaintiff was entitled to receive from the defendant the value of the services rendered by him as proved, less what he had already been paid. And they were further told by the instruction that to show such a valid contract it must be proved that it was assented and agreed to by both parties and was for a sufficient consideration. This instruction was highly prejudicial to the defendant. In the first place there was no dispute but that there was a contract entered into between the parties, the only dispute being as to how much compensation plaintiff was to receive. It was undisputed that there was a valid contract entered into between the parties and of course, there was a valid and sufficient consideration. The defendant contended that the consideration was \$5,000.00 per year, and the plaintiff contended that





he was to receive compensation in addition to the \$5,000.00. The case of Holmes v. Stummel, 17 Ill. 455, cited by plaintiff is not in point. In that case there was a dispute as to whether a contract had been made between the parties. For the errors indicated, the judgment of the Municipal Court of Chicago is reversed and the cause remanded for a new trial.

REVERSED AND REMANDED.

TAYLOR, P.J. AND THOMSON, J. CONCUR.





338 - 28614

ALEX LOPANA,

Appellee,

v.

CHARLES THACHER,

Appellant.)

3863a  
234 I.A. 635  
APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

Opinion filed June 11, 1924.

MR. JUSTICE O'CONNOR delivered the opinion of the court.

Plaintiff brought an action of assumpsit against the defendant to recover \$780.00 claimed to be due him for commissions for obtaining a purchaser for a piece of real estate belonging to the defendant. There was a verdict and judgment in his favor for the amount of his claim, to reverse which the defendant prosecutes this appeal.

The record discloses that defendant owned a piece of real estate in Chicago, and that plaintiff occupied part of the premises as defendant's tenant. Plaintiff offered evidence tending to show that sometime during the month of November or December, 1920, he asked defendant if the property was for sale and that the defendant replied that it was and the price was \$26,000.00; that plaintiff said that he thought he had a purchaser for the property, and that the defendant agreed to pay him \$780.00 in case the property was sold; that afterwards he presented a purchaser for the property to the defendant, to whom the defendant sold the property for \$26,000.00; that he demanded payment of the \$780.00,



100 - 1000

1000 - 10000

10000 - 100000

100000 - 1000000

1000000 - 10000000

Division of the

of the

10000000 - 100000000

100000000 - 1000000000

1000000000 - 10000000000

which demand was refused on the ground as stated by the defendant that plaintiff had no license as a real estate broker.

Defendant offered evidence tending to show that appellee was a tailor occupying part of the premises in question and on or about December 10, 1930, when the defendant was passing the premises, he was called by plaintiff and asked if the premises were for sale; that the defendant replied stating that he would be willing to sell the property for \$36,000.00; that plaintiff said that he thought he had a purchaser; that nothing was said about any commissions or any sum of money being paid in case the sale was effected. There was further evidence tending to show that plaintiff and the purchaser of the property were friends; that plaintiff brought the purchaser to the defendant and that the deal was consummated; that just before the papers were executed for the sale of the property, plaintiff first made mention of the fact that he should be paid some commission; that the defendant thereupon denied that he was entitled to any such payment and refused to carry out the deal if he was required to pay anything; that thereupon the plaintiff stated that he did not want to prevent the deal from going through and waived any claim he might have for his services.

The evidence is irreconcilable. It is in direct conflict, but since there must be a re-trial of the case, we will refrain from discussing the testimony of the several witnesses. After the evidence of the plaintiff was in and the defendant had introduced all of his evidence, plaintiff called one Sol Kuit and over objection of defendant, this witness testified to the effect that he was acquainted with the plain-





tiff and in November, 1920, the plaintiff told the witness that the property was for sale for \$26,000.00, and that plaintiff wanted to know if the witness had a customer to purchase the property; that if he had, there was a chance to make a little money; that if the property were sold, plaintiff could get 3 percent for selling it. This evidence was objected to and was clearly inadmissible in that it tended to prove that plaintiff had been employed by the defendant to find a purchaser for the property and that he would be paid for so doing. Of course plaintiff could not prove that he was so employed and was to be paid in case the property was sold, by his own admissions and statements to third parties out of the presence of the defendant. While most of what this witness testified to was brought out on cross-examination, yet that fact does not change the situation because the cross-examination was entirely proper.

The case was a close one on the facts and we think the admission of the testimony of this witness was erroneous and prejudicial. And for this error the judgment of the Circuit Court of Cook County is reversed and the cause remanded for a new trial.

REVERSED AND REMANDED.

THOMSON, J. CONCURS;  
TAYLOR, P.J. DISSENTING:

The plaintiff's cause of action was not based upon an implied promise arising from proof of agency. Whether the plaintiff succeeded depended solely upon whether he could prove that the defendant expressly promised to pay him \$780.00. That was the issue made by the statement of



The same was a direct result of the fact that the  
the maintenance of the reputation of this office was  
and confidential. And for this reason the subject of the  
this Court of Appeal clearly is, indeed, the most serious  
for a new trial.

For the purpose of the present investigation, the following data were obtained from the records of the Bureau of Census, Department of Commerce, for the years 1947-1950:

claim and the affidavit of merits. There was evidence, that of the plaintiff and his daughter, that the defendant did so expressly promise, and it was not denied that the plaintiff procured the purchaser. The only evidence introduced as a result of the plaintiff's examination of Kuit, to which objection was made, was the single question, "Did the plaintiff tell you the price of the premises in question?" That was all. In the majority opinion, it appears as though Kuit, over the objection of the defendant, testified to quite a series of circumstances, whereas, the record shows, as I have just stated, that there was only one question and answer objected to, and that was, did the plaintiff tell Kuit the price of the premises in question in November, 1920?

Bearing in mind the issue, therefore, - that is, did the defendant make an express promise to pay the plaintiff \$780.00, and did the plaintiff furnish a purchaser - whether or not the plaintiff told Kuit in November, 1920, the price of the premises was entirely irrelevant and immaterial; so that in no view of it, in my judgment, does it seem reasonable to hold that its admission constituted such substantial error as to justify a reversal of the judgment.





CLASINA POELMAN and FRANCISQUE  
POELMAN,

Appellants,

v.

FRANK W. DE LEEUW,

Appellee.

386 4a  
234 I.A. 635

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed June 11, 1924.

MR. JUSTICE THOMSON delivered the opinion of  
the court.

By this appeal the plaintiffs seek to reverse an  
order of the Municipal Court of Chicago, entered on defend-  
ants petition, submitted more than thirty days after they had  
secured a judgment against the defendant in that court, by  
which order the court granted the defendant leave to appear  
and defend, the judgment of the plaintiffs to stand as secur-  
ity, such leave being granted upon the defendant paying the  
attorneys for the plaintiffs, \$150.

The defendant was a non-resident, living in Miami,  
Florida. The plaintiffs brought a tort action against him for  
fraud and deceit, involving the sale of some land in the Isle  
of Pines. An attachment in aid was sued out by the plaintiffs,  
on the ground of the defendant's non-residence, and a levy was  
made on certain real estate in Chicago, belonging to the de-  
fendant. Publication of notice of the beginning of this action  
was duly made and a copy of the notice was mailed to the defend-  
ant pursuant to the statute. The cause was reached for trial  
in due course, on October 10, 1921. The defendant had not filed





his appearance nor was he represented in court. The plaintiffs presented their proofs and a judgment was entered in their favor, both on the attachment issue and on the merits, the damages of the plaintiffs being assessed at \$1,000. When this judgment was entered in favor of the plaintiffs, the court ordered special execution to issue in favor of the plaintiffs against the attached property.

On October 3, 1932, nearly a year after the judgment was rendered, the defendant presented a petition to the Municipal Court under the provisions of Section 21 of the Municipal Court Act, asking the court to vacate the judgment of October 10, 1931. The plaintiffs filed their answer to this petition and on the issues thus presented, a hearing was had resulting in the entering of the order from which this appeal has been perfected.

It is contended by the defendant that the appeal should be dismissed, for the reason that the order appealed from is not a final and appealable order, citing Bailey v. Conrad, 271 Ill. 294. That case is not in point, for it involved an order vacating a decree on a motion interposed by the defendant, at the same term of court, at which the decree was entered. A petition in the nature of a bill in equity, filed under the provisions of section 21 of the Municipal Court Act, more than thirty days after judgment is entered in that court, requesting that the judgment be vacated or set aside, and that the defendant petitioner be given leave to defend, is in the nature of a new and separate suit and an order entered upon that petition, vacating the judgment or giving the defendant petitioner leave to appear and defend,





the judgment to stand as security, is a final and appealable order. A. I. Clark & Co. v. Charles Levy Co., 219 Ill. App. 656, and cases there cited.

In further support of the order appealed from, the defendant contends that the affidavit for attachment failed to comply with the requirements of the statute, in that it did not state the address of the defendant correctly, or that upon diligent inquiry it could not be learned. The affidavit in question stated that the defendant's place of residence was Miami, Florida, which was correct. It seems, however, that the defendant received his mail addressed to "Box 429, Route #2, Buena Vista Station, Miami, Florida." It further appears that the notice of the beginning of the plaintiff's suit, mailed by the Clerk of the Municipal Court of Chicago, following the filing of the affidavit referred to, did not reach the defendant. While the defendant did not receive the notice mailed to him by the Clerk of the Municipal Court of Chicago, and thus was not in a position to file his appearance and put in his defense, he did receive notice of the entering of the judgment against him in ample time to enable him to present his motion to the court, to vacate the judgment, within thirty days of its date, but he deliberately chose not to pursue that course. On the day the judgment was entered, October 10, 1921, counsel for the plaintiffs wrote the defendant a letter advising him that judgment had been entered on that day against him, in favor of the plaintiffs, for the sum of \$1,000, in an attachment suit which had been commenced the previous August, and he was advised that unless the matter was properly taken care of the plaintiffs would pro-





ced against his real estate in Chicago. Under date of October 17, 1931, the defendant replied to this letter, acknowledging receipt of the letter and saying that he had taken notice of the lawyers' advice, but that he was "in too big a hurry to get to work." He added that he would "settle this question for good with Mr. Poelman so you and Mr. Poelman will receive a letter from me with (in) a couple of days. I hope you will wait so long with (out) taking any action."

The proof shows that the defendant had a lawyer in Chicago who represented him in other matters, and yet he not only did nothing in the way of taking action promptly and within thirty days of the entering of the judgment against the defendant in this cause, but he continued to ignore the matter until the following summer, coming to Chicago about August 1, 1932, and consulting his lawyer about a month thereafter and finally presenting his petition on October 3, 1932.

On this petition, which is in the nature of a bill in equity, the affidavit for attachment, giving the residence of the defendant as Miami, Florida, should be considered sufficient in the absence of some showing to the effect that the plaintiffs knew the correct mailing address of the defendant at the time, but failed or neglected to give it, thus amounting to fraud on their part. Barks v. Donovan, 80 Ill. App. 341. No such showing was made. If the plaintiffs had entertained any disposition to prevent the defendant learning about the action that had been instituted or the judgment recovered,





until too late for him to defend, they would doubtless not have advised him, as they did under date of the judgment, that such judgment had been recovered.

As to the merits of the issues formed on the defendant's petition and the answer of the plaintiffs thereto, the defendant set forth in his petition that at the time he learned of the judgment of October 10, 1921, he was ill at Miami, with a fever, which affected him both bodily and mentally to such an extent that he was incapable of taking care of his matter; that he subsequently recovered his health so that he was able to come to Chicago about August 1, 1932, when he had his attorney make an investigation, resulting in the discovery that his real estate had been levied upon and sold, under a special execution; and that he had a meritorious defense to the plaintiffs' action.

In his testimony the defendant described his illness as "ague fever," stating that it confined him to his bed for four days, after which he was weak and so mentally affected that he was unable to handle his affairs and was not able to work for some four months. He also testified that in October 1921, he was living with a man named Linstra, in Florida, with whom he was in business at the time, on some land development plan. It was also shown that Linstra was in Chicago at the time of the hearing on the defendant's petition, but for some reason he did not appear and testify. It was brought out on cross-examination that the defendant did not require the services of a doctor at any time in connection with the illness to which he testified. The evidence shows that considerable correspondence took place between counsel for the plaintiffs



1. The first part of the report is a general statement of the purpose of the study and the scope of the work.

[illegible]

in his testimony and evidence presented was that  
he "saw" the "body" of the victim in the  
room, after which he was taken to the hospital  
and he was unable to recall the details of the  
case. He was then released. He was released  
to his family with a new name, "John", and  
he was in possession of the body of the victim.  
It was also shown that the victim was in the  
room at the time of the murder, and the  
body was found in the room. The body was  
found in the room and the body was found in  
the room. The body was found in the room.

and the defendant, immediately following counsel's letter of October 10, 1921, and defendant's letter in reply, of October 17, 1921. On November 4, 1921, counsel for the plaintiffs wrote the defendant again, saying that no further communication had been received from him, as he had intimated they might expect, in his letter of October 17, and that unless some definite arrangement was made about the judgment in question, by the following Friday, steps would be taken to collect the judgment. Under date of November 10, 1921, the defendant replied to this communication with a lengthy letter, set forth in four, single space, typewritten pages of the record, going into the matter in controversy with considerable detail. In this letter the defendant refused to submit any proposition in settlement of the controversy with the plaintiffs and he stated that he could come to Chicago any time he wanted to but he had some business on hand in Florida, which he would like to attend to, and he would probably be in Chicago the following spring.

Under date of November 14, 1921, counsel for the plaintiffs replied to this letter from the defendant, and among other things, offered to have the proceedings in which the plaintiffs had recovered their judgment opened up so as to permit the defendant to present his defense, provided he took advantage of their offer within ten days. Five days later, on November 19, 1921, the defendant replied to that letter, referring to the offer of counsel for the plaintiffs, saying that he did not consider it "right while I am discussing this matter with you and writing about it to you the days fly by and this way you could count ten days pretty quick."



[illegible]

The following is a list of the names of the persons who have been appointed to the various positions in the Department of the Interior, for the year 1900:

In this letter the defendant discusses the transaction at some length and makes an offer of settlement. Under date of November 25, 1921, counsel for plaintiffs again wrote the defendant, declining the offer of settlement submitted, and stated that if the ten day period referred to in counsel's last letter was too short a time, in the defendant's opinion, counsel would agree to a further delay of ten days from the date upon which he was writing, within which he would agree that the defendant might present his defense in the case in which the plaintiffs had recovered their judgment. Under date of December 5, the defendant again wrote counsel for the plaintiffs, advising him that he had written to the plaintiffs, themselves, proposing some new basis of settlement. Under date of December 9, 1921, counsel for the plaintiffs wrote the defendant declining the offer made by him in his letter to the plaintiffs direct.

It also appears from the record that under date of November 8, 1921, the defendant addressed a communication to the Clerk of the Municipal Court of Chicago, making inquiry about this case, and under date of November 18, 1921, the Clerk wrote the defendant giving him the information requested.

The voluminous correspondence participated in by the defendant, within a few days after the judgment in favor of the plaintiffs was entered in this case, and extending throughout a period of about two months thereafter, is entirely inconsistent with the defendant's position taken a year later, to the effect that he was taken ill about the time this judgment was rendered, and became so incapacitated





as to be unable to attend to his affairs. The correspondence indicates quite the contrary, and it further indicates that the defendant took the position, when he learned of this judgment, that he would take care of the matter when he got ready, and not before.

This was an action at law. Although the defendant was advised of the judgment in ample time to enable him to present his motion to vacate the judgment, within thirty days as prescribed by the statute, he did not do so, for apparently no other reason than the fact that he preferred to attend to such affairs as he had in hand elsewhere. Having deliberately neglected to avail himself of the remedy he had at law, if he wished to be relieved from this judgment, we are of the opinion that the trial court erred in granting him the equitable relief prayed for in his petition, especially after he had neglected and postponed availing himself of that remedy, although fully advised of all the facts, for nearly a year after the judgment had been entered and he knew proceedings were being taken against his property in Chicago.

For the reasons stated, the order of the Municipal Court of Chicago appealed from is reversed.

ORDER REVERSED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.





119 - 28395

THE KRITZER COMPANY,  
a corp.,

Appellee,

v.

JAMES H. CHANNON MFG. CO.,  
a corp.,

Appellant.

3865a

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

234 I.A. C 35

Opinion filed June 11, 1924.

MR. JUSTICE THOMSON delivered the opinion of  
the court.

By this appeal the defendant James H. Channon  
Mfg. Co. seeks to reverse a judgment for \$314.80, recovered  
by the plaintiff the Kritzer Company, in the Municipal Court  
of Chicago.

The defendant is a manufacturer of machinery. In  
carrying on its business it frequently engaged outside concerns  
to do machine work on parts that were to be put into the machines  
it manufactured. In the course of its business the defendant  
gave the plaintiff a written order for doing the machine work  
on 73 boiler plates, for which work the plaintiff was to be  
paid \$510.00. The defendant afterward sent the plaintiff  
12 plates, and the machine work on these plates was executed  
by the plaintiff and they were returned to the defendant. In  
due course, the plaintiff sent the defendant a bill for the  
work done upon these 12 plates, based on the rate established  
for the total number of plates at the total compensation  
agreed upon, the amount of this bill being \$77.40. The defend-  
ant sent the plaintiff its check in payment of this bill. In



115 - 115

THE FOLLOWING IS A SUMMARY OF THE RESULTS OF THE INVESTIGATION

1. The results of the investigation are as follows:

2. The results of the investigation are as follows:

3. The results of the investigation are as follows:

4. The results of the investigation are as follows:

5. The results of the investigation are as follows:

6. The results of the investigation are as follows:

7. The results of the investigation are as follows:

8. The results of the investigation are as follows:

9. The results of the investigation are as follows:

10. The results of the investigation are as follows:

11. The results of the investigation are as follows:

12. The results of the investigation are as follows:

13. The results of the investigation are as follows:

14. The results of the investigation are as follows:

15. The results of the investigation are as follows:

16. The results of the investigation are as follows:

17. The results of the investigation are as follows:

18. The results of the investigation are as follows:

19. The results of the investigation are as follows:

20. The results of the investigation are as follows:

21. The results of the investigation are as follows:

22. The results of the investigation are as follows:

the meantime, however, the defendant had cancelled its order affecting the balance of the 78 plates, and for that reason the plaintiff returned the defendant's check and demanded payment for the work done on the 12 plates, on a basis greater than that fixed by the total compensation which had been agreed upon for all the plates. It was the plaintiff's position that a reasonable compensation for the work done on the 12 plates, in view of the cancellation of the balance of the order, was \$314.80. The defendant refused to pay that amount and the plaintiff, thereupon, brought this suit, to recover it. After a trial before the court and a jury, the issues were found for the plaintiff and the damages were fixed at the amount sued for. Judgment followed accordingly.

At the time the defendant entered its appearance in this case, a trial by jury was demanded. Prior to the commencement of the trial of the case, the defendant asked leave of the court to withdraw its demand for a jury trial. The plaintiff objected to such withdrawal and the trial court sustained the objection. It is now contended by the defendant that the court erred in this ruling. In our opinion the ruling was correct. Section 56 of the Municipal Court Act, as amended in 1931, (Cahill's Ill. Statutes, ch. 37, par. 449) provides that in case either party files a demand for a jury trial, the case shall be tried by jury "unless both parties shall waive trial by jury and submit the cause to the court for trial without a jury." This provision must be considered as superseding that in section 30 of the same Act (Cahill's Ill. Statutes, ch. 37, par. 419) adopted in 1907, providing among other things, that a jury





demand "may be withdrawn by the party filing the same at any time before the trial."

The defendant contends that the plaintiff is not in a position to recover, on the basis of an implied contract to pay what the machine work on the parts which were actually machined was reasonably worth, because the proofs showed that it had made an express contract to do the work at a stipulated price, which fixed the compensation at \$6.40 a plate, and further, that plaintiff should be limited, in the amount recoverable, to \$77.40, because the rendering of a statement for that amount, by the plaintiff after the work was done, amounted to an account stated, and that this was an interpretation by the plaintiff of the terms of the contract, which it should not now be permitted to change. In our opinion, neither point is well taken. After the plaintiff had finished the work of machining the 12 plates, a bill for the part of the total contract, represented by that part of the work, was sent to the defendant. The contract between the parties, calling for the machining of 75 plates, was then still in full force and effect. It was not until after this time that the defendant cancelled the contract for the balance of the work. After this cancellation, the plaintiff sent the defendant a statement for the machining of the 12 plates, for an amount which it claimed was reasonable compensation for the work done on these plates, on the assumption that nothing further was to be done on this contract.

It is apparent that in sending its first statement the plaintiff was not interpreting its rights as to the work done, in the light of the cancellation of the balance of the



1. The first step is to identify the problem or issue that needs to be addressed. This involves gathering information and understanding the context of the situation.

[illegible]

1. The first of the above is the fact that the

contract, nor was the sending of the bill in any way establishing an account stated. The express contract in existence between the parties, did not purport to cover any situation which might be presented after the plaintiff had done a small part of the work called for and the defendant had cancelled the balance of it.

It is contended that there was a variance between the statement of claim and the proof, in that the statement of claim is for goods, wares and merchandise sold and delivered, whereas the proof discloses a claim for work and labor performed, and whereas the statement of claim was upon a quantum valebant, and the proof is based on a quantum meruit. As far as this point is concerned it is sufficient to point out the record does not disclose that any such question was raised or urged in the trial court. It, therefore, may not be raised by the defendant in this court.

It is contended further that the trial court erred in sustaining the plaintiff's objection to the defendant's offer in evidence of a letter written by the defendant to the plaintiff under date of December 15, 1930, in reply to a letter written by the plaintiff to the defendant under date of December 11, which letter had been offered in evidence by the plaintiff and received without objection, and to which the plaintiff replied by a letter dated December 16, which letter had also been offered in evidence by the plaintiff and received without objection. We are of the opinion that inasmuch as the plaintiff's letters of December 11 and December 16, had been received in evidence, which substantially set forth the plaintiff position with reference to the controversy between the parties





the court should have admitted the defendant's letter of December 15, in evidence, although it did contain many self-serving statements. We are further of the opinion, however, that defendant was not materially prejudiced by the court's ruling. The respective positions of the parties, as set forth in this correspondence, were clearly presented to the jury, by the other testimony presented, and in our opinion, nothing was added to such presentation by the letters of the plaintiff which were received in evidence, nor could anything further have been added to such presentation on the part of the defendant, if its letter had been received in evidence.

The defendant further contends that the trial court erred in instructing the jury. The court charge the jury orally and in some respects it may be said that the charge was not accurate. For example, the court told the jury that the plaintiff claimed that it had a contract with the defendant and that the defendant had breached it, and further that it was for the jury to determine what the contract was and whether the plaintiff had kept it or breached it, and whether if the plaintiff had kept it, the defendant had breached it. This was quite incorrect. There was no claim that the plaintiff had breached the contract. The defendant had cancelled the order for the work involved, after it had been partly done, but the plaintiff was not complaining about the cancelling of the contract or suing on the basis of a breach. The sole question presented was as to whether the plaintiff was entitled to be compensated for the machine work done on the 13 plates, on the basis of a quantum meruit, or only at the rate per plate figured on the basis of the compensation stipulated in the contract for



The court would have admitted the statement made by  
Deborah 12, in evidence, although it did not appear to  
self-serving statement. It was believed by the court,  
however, that Deborah was not honestly reporting to  
the court's belief. The statement was made in the  
and was made in this circumstance, none of the  
to the fact, by the other testimony presented, and in the  
evidence, making the same as true, particularly in the  
of the plaintiff which was made in evidence, and which  
existing between the two sides of the controversy in the  
fact of the defendant, if the facts are as stated in  
evidence.

The defendant further contends that the fact that  
there is testimony to the fact. The court says the fact  
itself and it was reported as true by the other side  
two accounts, the court, the court says the fact that the  
plaintiff claims that it was a statement which was  
and that the defendant has presented it, and Deborah 12 is  
and for the fact in evidence that the court and the court  
the plaintiff has said it is as stated in, and Deborah 12 is  
plaintiff has said it, the defendant has presented it. This  
was quite incorrect. There was no claim that the plaintiff had  
presented the court. The defendant has presented the fact that  
the fact is true, also it has been said, and the court  
fact was not contradictory about the fact of the court  
it being on the facts of a woman. The court says the court  
and was as to whether the plaintiff was entitled to be heard.  
which the fact was true on the 12 facts, on the facts

the entire job of machining the 72 plates. Notwithstanding the inaccuracy of the charge referred to, we are of the opinion that on the whole charge, the jury must have understood clearly the issues they were called upon to decide, and that, therefore, there was not such error, in connection with the charge to the jury, as would warrant a reversal of this judgment. At the conclusion of the court's main charge to the jury, it appears from the record that the court addressed counsel representing the parties and asked if they had anything to suggest. Some suggestions were made, and the record shows considerable conversation back and forth between the court and counsel, the court appearing now and then to turn to the jury with some further remarks in the way of a supplemental charge or instruction. In the course of this colloquy, the court stated that if the jury found that the contract was as contended for by the defendant, their verdict would be for the plaintiff in the sum of \$77.40, and, on the other hand, if they found the contract was not as the defendant contended, but as contended for by the plaintiff, their verdict would be for the plaintiff in the sum of \$214.80. That was the last thing said by the court to the jury or in the hearing of the jury, on that question, and the court then submitted to them one form of verdict, finding the issue against the defendant and assessing the plaintiff's damages "at the sum of \$\_\_\_\_\_," the court telling the jury to fill in the blank with the amount they found to be due.

The defendant further contends that the trial court erred in making certain alterations in the stenographic report or bill of exceptions. The contention seems to be that inasmuch





as the proceedings in the trial court were taken in shorthand "by a thorough and competent court reporter \* \* \* and subsequently transcribed and reduced to the form of a stenographic report," it was necessarily accurate and true and that upon the presentation of such a report, it was the duty of the court to sign it and certify it as a correct bill of exceptions and it was an abuse of discretion for the court to alter it. It is the duty of the trial judge to settle the bill of exceptions and his decision as to what occurred during the course of the trial, is final. Mayville v. French, 248 Ill. 434. It may be said further that we have examined all the matters referred to by counsel for the defendant in this connection, and in our opinion none of them may be said to have any effect whatever upon the issues presented, nor do they vitally effect the substance of the matter contained in the exceptions. They relate entirely to the rule of the Municipal Court relating to the instructions, which is inserted in the record; to the wording of parts of the charge of the court to the jury, and the question of whether the court was addressing the jury or counsel, at certain points during the proceedings that immediately followed the charge, and finally, a recital that the jury retired with the bailiff, and that thereafter, in their absence and out of their hearing, it was stipulated that the jury might return a sealed verdict.

We find no error in the record and therefore the judgment of the Municipal Court is affirmed.

AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.





151 - 28427

HARRY LEVY,

Appellee,

v.

MEYER S. LANDFIELD, et al.,

Appellants.)

3866  
2341.A. 635  
APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed June 11, 1924

MR. JUSTICE THOMSON delivered the opinion of the court.

The plaintiff, Levy, brought this action in the Municipal Court of Chicago against the defendants Landfield and Bloom, seeking to recover money he had paid them as a deposit on a contract, under which he undertook to purchase a store and furnishings from the defendants. It was the plaintiff's claim that the defendants had represented that they had a three year written lease on the store, and that this entered into the consideration he was to receive for the purchase price, and it turned out that they had no lease in writing, but were merely tenants from month to month, whereupon, the plaintiff claimed he tried to rescind the contract and get back the money he had paid over to the defendants as a deposit. The evidence was heard in the trial court without a jury, after which, a finding was made for the plaintiff, and judgment was entered in his favor, for \$1430.35. To reverse that judgment the defendants have perfected this appeal.

The substance of the plaintiff's case as shown by the evidence submitted in his behalf, was to the effect that





he went to the store in question, by reason of an advertisement for its sale which had been made by the defendants. He met both of the defendants at the store and after some conversation, the plaintiff asked them what their price was and they said it was \$3500.00; thereupon, the plaintiff asked the defendants if they had a lease on the store, and one of them replied that they had a three year written lease in their possession, calling for a rental of \$200.00 during the first year, and \$250.00 the next year. After some further conversation concerning the amount the defendants wanted paid down in cash and the matter of making subsequent payments, the parties all left the store and went to a bank where the plaintiff had some cash and securities in a safety deposit box. The defendants had stated they wanted a \$2,000 cash payment. The plaintiff explained that he had \$1200.00 or \$1300.00 in the bank, and the defendants suggested that he pay that over to them at once and pay the balance of \$2,000 the next day. When the parties reached the plaintiff's bank, it was found that he had \$1303.00 in cash and securities in his deposit box and he turned that over to the defendants, for which they gave him a receipt reading as follows: "Received of Harry Levy Thirteen Hundred and Three Dollars in securities and cash as a deposit on store with complete contents, at 4634 So. Ashland Avenue (fixtures and store) without liability, balance \$2,197.00."

At the time the plaintiff made this first payment and took the receipt, he asked for a bill of sale, but one of the defendants stated that the help was gone and he would bring the bill of sale down to the store the next morning. The plaintiff testified he also asked about the lease again



...

he went to the store in question, by reason of an investigation  
for the sale which had been made by the defendant. He was  
told of the defendant at the store and that they were engaged  
then, the plaintiff asked them what their price was for the  
sale of the goods; however, the plaintiff asked the de-  
fendant if they had a house on the street, and one of them re-  
plied that they had a three year old house in 1911, and  
again, asking for a price of \$1000.00 during the year 1911,  
and during the year 1912, after some further investigation  
concerning the house the defendant wanted \$1100.00 in 1911 and  
the matter of making subsequent payments, the plaintiff told him  
the store and went to a bank where the plaintiff had some  
cash and securities in a safety deposit box. The defendant  
had asked they wanted a \$1,000.00 cash payment. The plaintiff  
explained that he had \$1,000.00 in the bank, and  
the defendant suggested that he pay that over to him at once  
and pay the balance of \$1,000.00 the next day. When the plaintiff  
reached the plaintiff's house, he was found that he had \$1,000.00  
in cash and securities in his safety box and he turned that  
over to the defendant, for which they gave him a receipt  
reading as follows: "Received of Henry Levy fifteen hundred  
and three dollars in money and cash as a deposit on  
goods with mortgage agreement, as above described, value \$1,500.00."  
At the time the plaintiff made this first receipt  
and then the receipt, he asked for a bill of sale, but one  
of the defendants stated that the bill was not then in their  
power and the bill of sale was to be given the next morning.

and one of the defendants replied to the effect that the lease also would be attended to the first thing in the morning. This occurred on the evening of January 31, 1933. It was part of the agreement that the plaintiff was to furnish a satisfactory indorser on the notes he was going to give for the balance of the purchase price amounting to \$1500. On the following Saturday evening the plaintiff had his endorser at the store and the notes were duly executed and endorsed. In the meantime the plaintiff, who had taken possession of the store, made further payments, bringing the total amount paid up to \$1600.00, and he testified he had enough further cash available to pay the balance of \$2,000.00 which had been fixed by the defendants as the amount they must have in cash. Before the notes were delivered the plaintiff's endorser insisted upon examining the lease. The plaintiff testified that Bloom suggested they wait until Monday morning, when everything would be all right, and on Monday he came back to the store without a lease. The plaintiff asked him for the landlord's name and Bloom said he did not know what it was. Through a neighbor the plaintiff discovered that the property was owned by a Mrs. Solkowsky, whereupon the plaintiff consulted her and she told him he could not have a written lease as she had promised someone else a lease to the store. The plaintiff testified that the defendants kept coming to the store every day and he told them what Mrs. Solkowsky had said to him, and they replied that she "was crazy". The plaintiff declined to make any further payments on his purchase of the store until the defendants delivered the lease they had represented as being in their possession. About a week after the notes were made out, the defendants appeared at the store and suggested that the plain-



and one of the defendants replied to the effect that the  
same also would be attended to the first thing in the  
morning. This occurred in the evening of January 21, 1937.  
It was part of the agreement that the plaintiff was to receive  
a satisfactory indemnity on the basis of the sum of \$100,  
for the balance of the business which amounted to \$100.  
On the following Saturday morning the plaintiff and the  
defendants at the time and the business was being conducted and  
continued. In the morning the plaintiff, who had been  
intentional of the effect, made further payment, paying  
the total amount paid on \$100.00, and the plaintiff is  
and would further make available to pay the balance of  
\$10,000.00 which had been fixed by the defendants on the  
amount they were to pay in cash. Before the time they  
received the plaintiff's money, the plaintiff was receiving  
the money. The plaintiff testified that he was receiving the  
with small money, which was everything which he had, and  
and as money he was paid to the other without a receipt. The  
plaintiff asked him the defendant's name and that was the  
the not know what it was. Through a witness the plaintiff  
discovered that the property was sold to a Mr. [Name],  
whereupon the plaintiff testified that he was paid the  
would not have a witness from the fact that the witness  
also a house on the street. The plaintiff testified that the  
defendants have wanted to the other party and he said that  
that was necessary and also to him, and they replied that the  
"was empty". The plaintiff testified that he was paid the  
money on the payment of the other party, the witness and the  
received the money they had requested as being in their  
possession. After a week after the other party was paid, the

tiff accompany them to see a lawyer, "and you will have your lease." The plaintiff explained that he would have to go out to a telephone and call in a Miss Goldenberg, to look after his store in his absence, and accordingly, he went to a restaurant nearby, with the defendant Landfield, to telephone, leaving the defendant Bloom in the store, with the janitor and a salesman who had been hired by the plaintiff on the recommendation of the defendants. The plaintiff testified that when he got back to the store it was closed and there was a new lock on the door so that he could not get in. There was an automobile in front of the store in which the defendants had apparently come, and when the plaintiff got back to the store the defendant Bloom was sitting in the automobile, and the plaintiff testified that Bloom told him that if he paid over the rest of the money, it would be all right, but if it wasn't paid he would have all the stock sold by the following Monday. This was on Friday. The plaintiff testified that he consulted a lawyer, after which he went to the Waldron Storage and Warehouse Company and arranged to have the merchandise in the store taken out and put in storage. Late that evening a truck from the Warehouse Company went to the store and the plaintiff broke the lock and they began to load the merchandise into the truck, when the police arrived and arrested everybody present and took them to the police station, together with the goods that had been loaded on the truck. Subsequently, it appears that the goods taken to the station were returned to the store and the parties went to a neighboring bank, where the keys of the store were turned over to the bank, to be held under an escrow agreement, until the rights of the respective parties to the merchandise had been determined. The exact terms of this escrow agreement do not appear in the record.



this morning, when he was a lawyer, and he will have  
 been. The plaintiff explained that he was not in  
 out in a telephone and will in a like manner, he had  
 after his stay in his chamber, and accordingly, he went to a  
 restaurant nearby, with the telephone number, he believed,  
 leaving the telephone book in his room, with the number  
 and a witness who had been with him at the time of the  
 conversation at the telephone. The plaintiff testified that  
 when he got back to the state of the state of the state  
 and that he had been in the state of the state of the state  
 an automobile in front of the house in which the telephone  
 had apparently been, and that the plaintiff had been in the  
 state the telephone book was found in the telephone, and  
 the plaintiff testified that he had been in the state of the state  
 over the rest of the state, it would be the state, and it  
 is woman's word he would have all the state held by the state  
 say Sunday. This was on Friday. The plaintiff testified that  
 he mentioned a lawyer, after this he went to the state  
 through and through through the state to have the state  
 time in the state when and was in the state. This was  
 evening a friend from the state of the state of the state  
 and the plaintiff broke the state and the state to have the  
 immediately into the state, when the state arrived and answered  
 everything, and that he had been in the state, and that  
 after the state had been found in the state, and that  
 it seemed that the state was in the state of the state  
 to the state and the state was in a state of the state, and  
 the day of the state was found in the state, and he had  
 with an entire agreement, and the state of the state  
 parties in the state and the state. The state

Subsequently, the defendants got possession of the goods and sold them for something less than \$1,000, and they filed a counter claim in the suit at bar against the plaintiff, under which they sought to recover from the plaintiff the difference between the amount the plaintiff had agreed to pay for the store, \$3500.00, and the amount of cash he paid in, plus the amount the defendants had received in the ultimate sale of the merchandises. The amount of the judgment awarded the plaintiff by the trial court, \$1430.35, represented the amount of cash he had paid the defendants, \$1800.00, less certain amounts which the defendants had taken over from sales made at the store during the short period the parties seem to have been in joint possession of the store after the plaintiff had paid over his \$1800.00 and was refusing to pay the balance of \$400.00 in cash, or turn over the notes, until he received his lease.

Counsel for the plaintiff in the brief filed in this court directs our attention to a motion to strike the bill of exceptions from the record. This motion was made in the plaintiff's behalf in this court shortly after the appeal was filed here and the motion was passed upon at that time and will not be entertained again now.

In support of their appeal the defendants contend that the record fails to show that the alleged three year written lease was a part of the contract or was any part of the consideration for which the plaintiff agreed to pay \$3500.00. In this connection, the defendants contend that the receipt embodies the contract of the parties and in the brief filed in behalf of the defendants that receipt is referred to as a "receipt-contract". It is quite apparent from the record that the re-



It is the policy of the Government to provide for the maintenance of the national defense and the security of the United States. The Government is committed to the principle of self-defense and the right to protect its citizens and its interests. The Government is also committed to the principle of non-aggression and the right to defend itself against aggression. The Government is also committed to the principle of international law and the right to defend its interests in the world. The Government is also committed to the principle of human rights and the right to defend its citizens against human rights violations. The Government is also committed to the principle of peace and the right to defend its interests in the world. The Government is also committed to the principle of justice and the right to defend its citizens against injustice. The Government is also committed to the principle of freedom and the right to defend its citizens against oppression. The Government is also committed to the principle of equality and the right to defend its citizens against discrimination. The Government is also committed to the principle of democracy and the right to defend its citizens against tyranny. The Government is also committed to the principle of justice and the right to defend its citizens against injustice. The Government is also committed to the principle of freedom and the right to defend its citizens against oppression. The Government is also committed to the principle of equality and the right to defend its citizens against discrimination. The Government is also committed to the principle of democracy and the right to defend its citizens against tyranny.

1. The first of these is the fact that the  
2. second is the fact that the third is the fact that the  
3. fourth is the fact that the fifth is the fact that the  
4. sixth is the fact that the seventh is the fact that the  
5. eighth is the fact that the ninth is the fact that the  
6. tenth is the fact that the eleventh is the fact that the  
7. twelfth is the fact that the thirteenth is the fact that the  
8. fourteenth is the fact that the fifteenth is the fact that the  
9. sixteenth is the fact that the seventeenth is the fact that the  
10. eighteenth is the fact that the nineteenth is the fact that the  
11. twentieth is the fact that the twenty-first is the fact that the  
12. twenty-second is the fact that the twenty-third is the fact that the  
13. twenty-fourth is the fact that the twenty-fifth is the fact that the  
14. twenty-sixth is the fact that the twenty-seventh is the fact that the  
15. twenty-eighth is the fact that the twenty-ninth is the fact that the  
16. thirtieth is the fact that the thirty-first is the fact that the  
17. thirty-second is the fact that the thirty-third is the fact that the  
18. thirty-fourth is the fact that the thirty-fifth is the fact that the  
19. thirty-sixth is the fact that the thirty-seventh is the fact that the  
20. thirty-eighth is the fact that the thirty-ninth is the fact that the  
21. fortieth is the fact that the forty-first is the fact that the  
22. forty-second is the fact that the forty-third is the fact that the  
23. forty-fourth is the fact that the forty-fifth is the fact that the  
24. forty-sixth is the fact that the forty-seventh is the fact that the  
25. forty-eighth is the fact that the forty-ninth is the fact that the  
26. fiftieth is the fact that the fifty-first is the fact that the  
27. fifty-second is the fact that the fifty-third is the fact that the  
28. fifty-fourth is the fact that the fifty-fifth is the fact that the  
29. fifty-sixth is the fact that the fifty-seventh is the fact that the  
30. fifty-eighth is the fact that the fifty-ninth is the fact that the  
31. sixtieth is the fact that the sixty-first is the fact that the  
32. sixty-second is the fact that the sixty-third is the fact that the  
33. sixty-fourth is the fact that the sixty-fifth is the fact that the  
34. sixty-sixth is the fact that the sixty-seventh is the fact that the  
35. sixty-eighth is the fact that the sixty-ninth is the fact that the  
36. seventieth is the fact that the seventy-first is the fact that the  
37. seventy-second is the fact that the seventy-third is the fact that the  
38. seventy-fourth is the fact that the seventy-fifth is the fact that the  
39. seventy-sixth is the fact that the seventy-seventh is the fact that the  
40. seventy-eighth is the fact that the seventy-ninth is the fact that the  
41. eightieth is the fact that the eighty-first is the fact that the  
42. eighty-second is the fact that the eighty-third is the fact that the  
43. eighty-fourth is the fact that the eighty-fifth is the fact that the  
44. eighty-sixth is the fact that the eighty-seventh is the fact that the  
45. eighty-eighth is the fact that the eighty-ninth is the fact that the  
46. ninetieth is the fact that the ninety-first is the fact that the  
47. ninety-second is the fact that the ninety-third is the fact that the  
48. ninety-fourth is the fact that the ninety-fifth is the fact that the  
49. ninety-sixth is the fact that the ninety-seventh is the fact that the  
50. ninety-eighth is the fact that the ninety-ninth is the fact that the  
51. hundredth is the fact that the hundred-first is the fact that the  
52. hundred-second is the fact that the hundred-third is the fact that the  
53. hundred-fourth is the fact that the hundred-fifth is the fact that the  
54. hundred-sixth is the fact that the hundred-seventh is the fact that the  
55. hundred-eighth is the fact that the hundred-ninth is the fact that the  
56. hundred-tenth is the fact that the hundred-eleventh is the fact that the  
57. hundred-twelfth is the fact that the hundred-thirteenth is the fact that the  
58. hundred-fourteenth is the fact that the hundred-fifteenth is the fact that the  
59. hundred-sixteenth is the fact that the hundred-seventeenth is the fact that the  
60. hundred-eighteenth is the fact that the hundred-nineteenth is the fact that the  
61. hundred-twentieth is the fact that the hundred-twenty-first is the fact that the  
62. hundred-twenty-second is the fact that the hundred-twenty-third is the fact that the  
63. hundred-twenty-fourth is the fact that the hundred-twenty-fifth is the fact that the  
64. hundred-twenty-sixth is the fact that the hundred-twenty-seventh is the fact that the  
65. hundred-twenty-eighth is the fact that the hundred-twenty-ninth is the fact that the  
66. hundred-thirtieth is the fact that the hundred-thirty-first is the fact that the  
67. hundred-thirty-second is the fact that the hundred-thirty-third is the fact that the  
68. hundred-thirty-fourth is the fact that the hundred-thirty-fifth is the fact that the  
69. hundred-thirty-sixth is the fact that the hundred-thirty-seventh is the fact that the  
70. hundred-thirty-eighth is the fact that the hundred-thirty-ninth is the fact that the  
71. hundred-fortieth is the fact that the hundred-forty-first is the fact that the  
72. hundred-forty-second is the fact that the hundred-forty-third is the fact that the  
73. hundred-forty-fourth is the fact that the hundred-forty-fifth is the fact that the  
74. hundred-forty-sixth is the fact that the hundred-forty-seventh is the fact that the  
75. hundred-forty-eighth is the fact that the hundred-forty-ninth is the fact that the  
76. hundred-fiftieth is the fact that the hundred-fifty-first is the fact that the  
77. hundred-fifty-second is the fact that the hundred-fifty-third is the fact that the  
78. hundred-fifty-fourth is the fact that the hundred-fifty-fifth is the fact that the  
79. hundred-fifty-sixth is the fact that the hundred-fifty-seventh is the fact that the  
80. hundred-fifty-eighth is the fact that the hundred-fifty-ninth is the fact that the  
81. hundred-sixtieth is the fact that the hundred-sixty-first is the fact that the  
82. hundred-sixty-second is the fact that the hundred-sixty-third is the fact that the  
83. hundred-sixty-fourth is the fact that the hundred-sixty-fifth is the fact that the  
84. hundred-sixty-sixth is the fact that the hundred-sixty-seventh is the fact that the  
85. hundred-sixty-eighth is the fact that the hundred-sixty-ninth is the fact that the  
86. hundred-seventieth is the fact that the hundred-seventy-first is the fact that the  
87. hundred-seventy-second is the fact that the hundred-seventy-third is the fact that the  
88. hundred-seventy-fourth is the fact that the hundred-seventy-fifth is the fact that the  
89. hundred-seventy-sixth is the fact that the hundred-seventy-seventh is the fact that the  
90. hundred-seventy-eighth is the fact that the hundred-seventy-ninth is the fact that the  
91. hundred-eightieth is the fact that the hundred-eighty-first is the fact that the  
92. hundred-eighty-second is the fact that the hundred-eighty-third is the fact that the  
93. hundred-eighty-fourth is the fact that the hundred-eighty-fifth is the fact that the  
94. hundred-eighty-sixth is the fact that the hundred-eighty-seventh is the fact that the  
95. hundred-eighty-eighth is the fact that the hundred-eighty-ninth is the fact that the  
96. hundred-ninetieth is the fact that the hundred-ninety-first is the fact that the  
97. hundred-ninety-second is the fact that the hundred-ninety-third is the fact that the  
98. hundred-ninety-fourth is the fact that the hundred-ninety-fifth is the fact that the  
99. hundred-ninety-sixth is the fact that the hundred-ninety-seventh is the fact that the  
100. hundred-ninety-eighth is the fact that the hundred-ninety-ninth is the fact that the  
101. two hundredth is the fact that the two hundred-first is the fact that the  
102. two hundred-second is the fact that the two hundred-third is the fact that the  
103. two hundred-fourth is the fact that the two hundred-fifth is the fact that the  
104. two hundred-sixth is the fact that the two hundred-seventh is the fact that the  
105. two hundred-eighth is the fact that the two hundred-ninth is the fact that the  
106. two hundred-tenth is the fact that the two hundred-eleventh is the fact that the  
107. two hundred-twelfth is the fact that the two hundred-thirteenth is the fact that the  
108. two hundred-fourteenth is the fact that the two hundred-fifteenth is the fact that the  
109. two hundred-sixteenth is the fact that the two hundred-seventeenth is the fact that the  
110. two hundred-eighteenth is the fact that the two hundred-nineteenth is the fact that the  
111. two hundred-twentieth is the fact that the two hundred-twenty-first is the fact that the  
112. two hundred-twenty-second is the fact that the two hundred-twenty-third is the fact that the  
113. two hundred-twenty-fourth is the fact that the two hundred-twenty-fifth is the fact that the  
114. two hundred-twenty-sixth is the fact that the two hundred-twenty-seventh is the fact that the  
115. two hundred-twenty-eighth is the fact that the two hundred-twenty-ninth is the fact that the  
116. two hundred-thirtieth is the fact that the two hundred-thirty-first is the fact that the  
117. two hundred-thirty-second is the fact that the two hundred-thirty-third is the fact that the  
118. two hundred-thirty-fourth is the fact that the two hundred-thirty-fifth is the fact that the  
119. two hundred-thirty-sixth is the fact that the two hundred-thirty-seventh is the fact that the  
120. two hundred-thirty-eighth is the fact that the two hundred-thirty-ninth is the fact that the  
121. two hundred-fortieth is the fact that the two hundred-forty-first is the fact that the  
122. two hundred-forty-second is the fact that the two hundred-forty-third is the fact that the  
123. two hundred-forty-fourth is the fact that the two hundred-forty-fifth is the fact that the  
124. two hundred-forty-sixth is the fact that the two hundred-forty-seventh is the fact that the  
125. two hundred-forty-eighth is the fact that the two hundred-forty-ninth is the fact that the  
126. two hundred-fiftieth is the fact that the two hundred-fifty-first is the fact that the  
127. two hundred-fifty-second is the fact that the two hundred-fifty-third is the fact that the  
128. two hundred-fifty-fourth is the fact that the two hundred-fifty-fifth is the fact that the  
129. two hundred-fifty-sixth is the fact that the two hundred-fifty-seventh is the fact that the  
130. two hundred-fifty-eighth is the fact that the two hundred-fifty-ninth is the fact that the  
131. two hundred-sixtieth is the fact that the two hundred-sixty-first is the fact that the  
132. two hundred-sixty-second is the fact that the two hundred-sixty-third is the fact that the  
133. two hundred-sixty-fourth is the fact that the two hundred-sixty-fifth is the fact that the  
134. two hundred-sixty-sixth is the fact that the two hundred-sixty-seventh is the fact that the  
135. two hundred-sixty-eighth is the fact that the two hundred-sixty-ninth is the fact that the  
136. two hundred-seventieth is the fact that the two hundred-seventy-first is the fact that the  
137. two hundred-seventy-second is the fact that the two hundred-seventy-third is the fact that the  
138. two hundred-seventy-fourth is the fact that the two hundred-seventy-fifth is the fact that the  
139. two hundred-seventy-sixth is the fact that the two hundred-seventy-seventh is the fact that the  
140. two hundred-seventy-eighth is the fact that the two hundred-seventy-ninth is the fact that the  
141. two hundred-eightieth is the fact that the two hundred-eighty-first is the fact that the  
142. two hundred-eighty-second is the fact that the two hundred-eighty-third is the fact that the  
143. two hundred-eighty-fourth is the fact that the two hundred-eighty-fifth is the fact that the  
144. two hundred-eighty-sixth is the fact that the two hundred-eighty-seventh is the fact that the  
145. two hundred-eighty-eighth is the fact that the two hundred-eighty-ninth is the fact that the  
146. two hundred-ninetieth is the fact that the two hundred-ninety-first is the fact that the  
147. two hundred-ninety-second is the fact that the two hundred-ninety-third is the fact that the  
148. two hundred-ninety-fourth is the fact that the two hundred-ninety-fifth is the fact that the  
149. two hundred-ninety-sixth is the fact that the two hundred-ninety-seventh is the fact that the  
150. two hundred-ninety-eighth is the fact that the two hundred-ninety-ninth is the fact that the  
151. three hundredth is the fact that the three hundred-first is the fact that the  
152. three hundred-second is the fact that the three hundred-third is the fact that the  
153. three hundred-fourth is the fact that the three hundred-fifth is the fact that the  
154. three hundred-sixth is the fact that the three hundred-seventh is the fact that the  
155. three hundred-eighth is the fact that the three hundred-ninth is the fact that the  
156. three hundred-tenth is the fact that the three hundred-eleventh is the fact that the  
157. three hundred-twelfth is the fact that the three hundred-thirteenth is the fact that the  
158. three hundred-fourteenth is the fact that the three hundred-fifteenth is the fact that the  
159. three hundred-sixteenth is the fact that the three hundred-seventeenth is the fact that the  
160. three hundred-eighteenth is the fact that the three hundred-nineteenth is the fact that the  
161. three hundred-twentieth is the fact that the three hundred-twenty-first is the fact that the  
162. three hundred-twenty-second is the fact that the three hundred-twenty-third is the fact that the  
163. three hundred-twenty-fourth is the fact that the three hundred-twenty-fifth is the fact that the  
164. three hundred-twenty-sixth is the fact that the three hundred-twenty-seventh is the fact that the  
165. three hundred-twenty-eighth is the fact that the three hundred-twenty-ninth is the fact that the  
166. three hundred-thirtieth is the fact that the three hundred-thirty-first is the fact that the  
167. three hundred-thirty-second is the fact that the three hundred-thirty-third is the fact that the  
168. three hundred-thirty-fourth is the fact that the three hundred-thirty-fifth is the fact that the  
169. three hundred-thirty-sixth is the fact that the three hundred-thirty-seventh is the fact that the  
170. three hundred-thirty-eighth is the fact that the three hundred-thirty-ninth is the fact that the  
171. three hundred-fortieth is the fact that the three hundred-forty-first is the fact that the  
172. three hundred-f

ceipt referred to was in no way the contract between the parties. That contract was oral and involved the purchase and sale of a gentlemen's furnishing goods business. The plaintiff's theory, clearly borne out by a preponderance of the evidence, was to the effect that he agreed to pay \$3500.00 for the store, fixtures and stock of goods in the store, on the representation that the owners of the store had a three year lease on the premises, which they were in a position to assign to the plaintiff. The fact that the receipt makes no mention of the lease, but merely refers to the "store with complete contents (fixtures and stock)" in our opinion does not in any way affect the question involved. In the first place the receipt was a document not signed by the plaintiff but by the defendants, and even if it had been signed by the plaintiff, evidence would be admissible in explanation of the transaction, in connection with which it was issued. Hudson v. Merchants Reserve Life Ins. Co., 204 Ill. App. 348.

The defendants also contend that if the plaintiff wished to rescind the contract claiming fraud or misrepresentation, he should have done so promptly, and that he was not in a position to rescind after having, in effect, confirmed the contract by "attempting to secrete the goods," referring apparently to the plaintiff's attempt to get the goods into a storage warehouse after one of the defendants had managed to get the plaintiff out of the store while the other one put a new lock on the door and closed the store up and then refused to give the plaintiff possession unless he turned over the balance of the consideration. In our opinion the plaintiff is not shown to have done anything to preclude him from declaring the contract rescinded, and suing for the money he had paid.





On the very first conference the plaintiff had with the defendants, he asked about the lease and they assured him they had a three year written lease. The plaintiff and his endorser demanded the lease a few days later when the notes were made out, as a condition precedent to the turning over of the notes. The evidence shows that repeatedly, before as well as after the occasion last referred to, plaintiff demanded the lease. After finding out who the landlord was and discovering that the defendants did not have a lease as they had represented they had, the plaintiff, in response to further demands for the balance of the purchase price, stated that he was not going to pay anything more until they produced the lease as they had agreed to. It was following this demand that the defendants managed to get the plaintiff out of the store and put a new lock on it, and when the plaintiff attempted to get possession of the store and thus get that much of the subject-matter of the contract, out of the control of the defendants, it may not be said that he was in any manner so confirming the contract as to preclude him from rescinding it and demanding back his money.

It is true that the defendants submitted evidence contradicting that of the plaintiff and his witnesses, on the issue of whether or not the subject-matter of the plaintiff's purchase included a lease, but, as counsel for the defendants puts it, in his reply brief, "the question of what exactly was the contract, was a question of fact for the court," the issues being submitted to the court without a jury. The court resolved that question in favor of the plaintiff and when counsel for the defendants pressed the court for the reason for the finding, at the time it was announced, the



On the 10th, 1914, the plaintiff was  
with the defendant, he asked him the reason for this  
and he said that he was a woman who was a  
girl and she thought she was a girl and she was  
when she was made out, she was a woman who was  
the plaintiff was of the woman. The woman was  
testified, before he said he was a woman who was  
before he, plaintiff, showed the woman who was  
and the plaintiff was and the plaintiff was  
not have a letter to her and the plaintiff was  
still, in response to the plaintiff's question, he  
testified, stated that he was not a woman who was  
were until they produced the letter to him and he  
and following this letter was the plaintiff's question to the  
the plaintiff out of the letter and he was not a woman  
when the plaintiff asked him the question of the letter  
and then he said that he was the subject of the letter  
and of the content of the letter, it was not a woman  
he was in any manner or condition the plaintiff was in evidence  
the from standing it was standing and he was.

It is from the fact that the plaintiff was a woman  
testified that at the plaintiff and the plaintiff was  
fact of the fact that the plaintiff was a woman  
question included a letter, but the plaintiff was the plaintiff  
page 17, in his reply letter, the plaintiff was a woman  
and the plaintiff was a question of the fact that the plaintiff  
the fact being admitted in the fact that the plaintiff was  
and the plaintiff was a woman who was a woman who was  
after the fact that the plaintiff was a woman who was a woman

court stated in substance that he believed the plaintiff and his witnesses had told the truth, while the defendants had, as the court put it, "exaggerated tremendously in their testimony on the material questions, and for that reason, where their testimony is not corroborated, I don't give a great deal of weight to it." From our examination of the evidence as we find it in the record, we are of the opinion that the trial court was entirely justified in the conclusion reached.

For the reasons stated, the judgment of the Municipal Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.





197 - 28473

GEORGIA W. WAYS,

Appellee,

v.

CHICAGO & WEST TOWNS RAIL-  
WAY COMPANY, a corp.,

Appellant.

3867a

234 I.A. 636

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

Opinion filed June 11, 1924.

MR. JUSTICE THOMSON delivered the opinion  
of the court.

By this appeal the defendant Railway Company seeks to reverse a judgment for \$800.00, recovered in the Superior Court of Cook County, by the plaintiff Georgia W. Ways, in an action for damages for personal injuries suffered by the plaintiff, by reason of the alleged negligence of the defendant company in the operation of one of its cars.

One of the contentions of the defendant in support of its appeal is that the plaintiff failed to make out her case either as to the alleged negligence of the defendant or her due care. The injuries complained of were received by the plaintiff in a collision between a small Ford runabout, in which the plaintiff was riding with her husband and her son, and a car belonging to the defendant company, at the intersection of Home avenue and Stanley avenue in the Village of Berwyn, in the County of Cook, Illinois. Home avenue is a north and south street and Stanley avenue crosses it in a slightly northeast and southwest direction. The defendant was operating a double track street railway in Stanley avenue.



57100 - 57110

068 AI 203

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 11/19/2001 BY 60322 UCBAW

THE UNIVERSITY OF CHICAGO

Journal of Management Education 33(10) 1173-1188

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

© 2000 Blackwell Science Ltd, *Journal of Internal Medicine* 247: 103–110

CONFIDENTIAL

...and the ...

Downloaded At: 11:53 11 September 2009

[illegible]

THESE DOCUMENTS, WHICH ARE THE PROPERTY OF THE NATIONAL ARCHIVES, ARE LOANED TO YOU BY THE NATIONAL ARCHIVES OF THE UNITED STATES OF AMERICA

Address to the 1994 Annual Meeting of the American Psychological Association, Washington, DC, September 1, 1994.

NOT A RECOMMENDED SOURCE FOR CITATIONS

© 1994 by John Wiley & Sons, Inc. All rights reserved.

one believes in the following manner: "If the world is not as it is, it is as it should be."

the 100,000 to 200,000 kg quantity that is needed to make a tonne of steel.

Source: *Journal of the American Medical Association*, 1954, 156: 1000-1001.

...and the ...

TABLE 1. *Summary of the 1997-1998 and 1998-1999 field seasons*

The latter is referred to in the record as a half street, there being approximately eleven feet between the north line of Stanley avenue and the north rail of the west bound track of the defendant company. Apparently there was no roadway on the southerly side of the street car tracks. On that side the right of way of the street car company was contiguous or very close to the right of way of the Chicago, Burlington & Quincy Railway Company. The crossing of the latter company at Home avenue was protected by crossing gates, attended by a flagman, but the crossing of the defendant company was not so protected.

The collision in question occurred about one o'clock in the afternoon of Thanksgiving Day, 1918. It was a dark, misty day and a drizzling rain was falling. The automobile in question was being driven by the plaintiff's husband, in a southerly direction along Home avenue, in about the center of that street. The plaintiff's husband was sitting on the left hand side of the only seat in the automobile, and the plaintiff was sitting on the right hand or westerly side of that seat. Their son, a boy of about eleven years of age, was sitting at his mother's feet on the floor of the automobile, with his feet out on the running board of the car. The side curtains of the car were in place so as to protect its occupants from the weather. The automobile was traveling at a speed of about fifteen miles an hour, and as it approached the crossing it slowed down to some extent; the plaintiff's husband testifying that as he crossed the tracks he was going about ten miles an hour. The street car of the defendant company was proceeding in an easterly direction, along the track on the south side of the railway, and it struck the automobile a little behind the middle, pushing it over to the east side of Home avenue and





a little to the south of the east bound track of the defendant company, and swinging it around so that it was facing in about a westerly direction when the two vehicles came to a standstill. The automobile was not ever-turned and none of its occupants were thrown out of it. The testimony tended to show that the automobile was pushed up against a telegraph pole.

The plaintiff's husband testified to these general facts and further, that the front wheels of his car were on the track of the defendant company when he first saw the car approaching, about 30 1/2 feet away; that up to that time he had heard no gong or other warning signal sounded; that the car was approaching rapidly, although he could not tell the exact rate of speed. After some further questioning, he testified that he would say its speed was about 25 miles an hour. On cross-examination the plaintiff's husband testified that looking through the isinglass windows in the side curtains he could probably see a distance of 300 feet; that there was not enough rain on them to obscure his view; that as he approached the tracks he looked both ways carefully, through the wind shield and isinglass curtains - this, at a point about 35 feet north of the tracks - and that he next looked when his wheels were on the south tracks, and at this point he heard his wife say that a car was coming. The plaintiff did not turn his car in either direction, nor alter his speed, and almost immediately the collision took place. The evidence was to the effect that the plaintiff and her family lived not far from this intersection and they were all familiar with its surroundings. On the northwest corner of the intersection in question, there was a tennis club containing a number of tennis courts, which were surrounded by a wire



a little to the north of the road house at the village  
and country, and nothing is known of the road at  
after a nearly straight line has been made by a  
road. The roadhouse was not built until the road was  
the roadhouse was known as the road. The roadhouse was  
also that the roadhouse was made up of a single  
piece.

The plaintiff's husband testified in his deposition  
that he knows that the roadhouse is in the road at the  
road of the defendant's road at the road and the roadhouse  
and about 20 feet away from the road and the roadhouse  
road to other things about the road and the roadhouse  
the roadhouse, which is about 20 feet from the road and the roadhouse  
about 20 feet from the roadhouse, the roadhouse was made up  
the roadhouse was made up of a single piece of the roadhouse  
the plaintiff's husband testified that he knows that the  
roadhouse is in the road and the roadhouse is in the road  
roadhouse at the roadhouse, which is about 20 feet from the roadhouse  
in the roadhouse the roadhouse is in the roadhouse and the roadhouse  
roadhouse is about 20 feet from the roadhouse and the roadhouse  
roadhouse - this is a piece of the roadhouse at the roadhouse  
and that he knows that the roadhouse is in the roadhouse  
roadhouse, and the roadhouse is in the roadhouse and the roadhouse  
roadhouse. The plaintiff's husband testified that he knows that the roadhouse  
the plaintiff's husband, and almost certainly the roadhouse  
roadhouse. The roadhouse was in the roadhouse and the roadhouse  
and the roadhouse is in the roadhouse and the roadhouse is in the roadhouse  
the plaintiff's husband testified that he knows that the roadhouse is in the roadhouse  
the roadhouse is in the roadhouse and the roadhouse is in the roadhouse

netting or fencing supported by the usual wooden uprights and cross pieces. About 150 feet west of the corner and near the sidewalk along the north side of Stanley avenue was a small one story building used as a club house. As the plaintiff and her husband approached the crossing in question there was nothing to obstruct their view to the street railway right of way from the west, between the crossing and this club house, except a few trees along Home avenue and others along Stanley avenue, and the uprights supporting the wire fencing.

The plaintiff's son testified in substance as his father did. He stated that he was unable to see out through the window in the side curtain without raising himself up slightly, and that he saw the car through the wind-shield just before it struck them. He stated that the automobile was being driven ten or fifteen miles an hour and that he could not tell anything about the speed of the street car.

The plaintiff also testified in general to the facts already referred to. She stated that as they approached the street car crossing she "was just sitting, looking out;" that she did not see anything until they were "just about upon the tracks;" that as they were on the north track, the street car "seemed to come right out of the mist or air;" that it was then about 30 feet away, and that she did not notice any gong being sounded "as we started to cross the track." She stated that the street car was approaching very fast. On cross-examination, she testified that the isinglass window in the side curtain opposite her was about 8" by 8" and that she could look out through this window, but she could not see very well on account of the mist; that "the fog was not to such a great extent, but



[illegible][illegible][illegible]

it was foggy;" that they were very near the car track when she first looked up and saw the car, which at that time was about 25 or 30 feet from their line of travel; that she immediately said, "There is a car;" and the next moment they were on the track and had been struck.

For the defendant, one O'Donnell testified that at the time of the occurrence in question, he was walking west along the north side of Stanley avenue, at a point something over a block and approximately 400 feet east of Home avenue, and that he saw the automobile coming south on Home avenue and the street car coming east on Stanley avenue; that it appeared to him the automobile was slowing up for the crossing; that he could not form an idea as to the speed of the street car, but he would say it was traveling at "an ordinary rate;" that he had no difficulty seeing the street car coming from the west; that he first saw it when it was about a block west of Home avenue and he first saw the automobile when it was passing the alley one half block north of Stanley avenue. On cross examination he testified that there was an appreciable slack in the speed of the automobile as it approached the crossing; that just previous to the collision he heard a bell; that that was all he heard - "there was a gong and a crash."

One Blazek, a boy about 13 years of age at the time of the occurrence in question, testified that he was on the front platform of the street car, standing just behind and to the right of the motorman; that he first saw the automobile when it was about 60 feet from the crossing, at which time the street car was about 150 feet from Home avenue; that at that point, the





motorman began to ring his gong; that the motorman started to slow down, about 80 feet from the crossing; that the automobile was going at a "moderate rate"; that he could see through the glass at the front of the street car for a distance of two or three blocks.

Another boy named Stibek, who was with Blazek standing on the front platform of the car with his back to the front of the car, testified that about 150 feet from the crossing the motorman started ringing his gong and he saw him reverse his motor; that the car was going between 18 and 20 miles an hour when it started to slow down; that he did not see the automobile until it was right in front of the car and on the rails; that he could see over a block out in front of the car; that the automobile was going at a moderate rate of speed as it got onto the track.

One Schive, the Chicago, Burlington & Quincy Railroad Company's flagman at Home avenue, testified that he did not see the collision but heard the crash and then looked up from his shanty and saw the street car pushing the automobile over to the side of the street. He testified that a train had just gone by and he had been attending to his gates; that he could see a train, on that day, four or five blocks away.

The motorman of the defendant's street car testified that he first saw the automobile when it was about 150 feet north of the crossing and at that time he was about 130 feet from Home avenue, running about 18 miles an hour; that he then gave his car an application of air to bring it under control, and began sounding his gong continuously; that as the automobile





approached the crossing it decreased its speed, as if coming to a stop and then started up to cross the crossing, and when he saw it start up, he gave his car an emergency application of air and reversed the motor; that the car then slid along the rails between 25 and 30 feet and came into collision with the automobile; that his judgment was that the automobile was going about 10 miles an hour when it was struck; that he could see about two blocks through the front window of his car.

It is conceded that under the law of this State, such negligence as the plaintiff's husband may have been guilty of, in the operation of his automobile, may not be imputed to the plaintiff. And on the other hand, before the plaintiff could be permitted to recover, it was incumbent upon her to allege and prove that she, herself, was in the exercise of reasonable care for her own safety upon the occasion in question. In our opinion, on the evidence as we find it in this record, the substance of which has been briefly stated, the question of the negligence of the defendant and also the question of the due care of the plaintiff, were for the jury, for it could not reasonably be said, either that the defendant was free of negligence or that the plaintiff was not in the exercise of due care, as a matter of law.

The defendant contends that the trial court erred in regard to the instructions. In this connection, the court gave an instruction reading as follows:

"You are instructed that if you believe from the evidence that the plaintiff, while in the exercise of ordinary care for her own safety - if you believe from the evidence that she was in the exercise of such care - was injured as a direct result and in consequence of the negligence of the defendant as charged in the





declaration, or one of the counts thereof, if you believe from the evidence that the defendant was so negligent, then you should find the defendant guilty."

We have been referred to many cases involving instructions telling the jury in substance that the plaintiff was entitled to recover if he had proven the negligence charged in the declaration or any count thereof. In some cases, instructions of this kind have been approved and in others they have not been. In Schlauder v. Chicago & Southern Traction Co., 253 Ill. 154, the Supreme Court said that "the practice of giving instructions referring the jury to the declaration has been repeatedly disapproved." In our opinion, the practice should never be followed. Lerette v. Director General, 306 Ill. 348. The jury as a rule does not have occasion to see the declaration nor hear it read, and it would probably have a tendency to confuse them if they did. In our opinion, the proper practice is for the trial court, in the instructions, to advise the jury in simple, plain language, what the substance of the allegations in the declaration is, and what the issues presented for their decision are. As stated by the Supreme Court in Krieger v. Aurora, Elgin & Chicago R.R. Co., 343 Ill. 544, if it is proper to give such an instruction at all, "it can only be justified where the declaration is a complete statement of a cause of action." In our opinion, however, neither the case last cited nor the case of Steurer v. Elgin & Belvedere Electric Co., 280 Ill. App. 546, both of which are relied upon by the defendant, in contending that the giving of the instruction above quoted was erroneous, support that contention. In both of these cases the declarations contained allegations, respecting the care and caution exercised by the plaintiff while he was riding across the tracks of the defendants,





and there was a controversy as to whether the plaintiff had been in the exercise of a proper degree of care, in permitting himself to be placed in the position of danger which resulted in his injuries. It was held that the effect of the instructions involved in those cases, was to limit the exercise of care and caution of the plaintiff to the time when he was in danger, regardless of his conduct in putting himself in that position. The declaration involved in the case at bar is not open to that objection, for the allegations in the various counts, as to the care of the plaintiff, were to the effect that "said plaintiff was then and there and therefore, and throughout all of said occurrence, in the exercise of due care and diligence."

Nor are we presented in the case at bar with a situation such as was presented in the case of McClauder v. Chicago & Southern Traction Co., supra, where there was a similar instruction given and where the declaration contained a count which made certain allegations of negligence which were supported by the evidence but which were not such as to entitle the plaintiff to recover. Rather, in the case at bar, it is contended that one of the counts, namely, the second, contained certain allegations of negligence, which, although on their face they made out a case of negligence, were not supported by the evidence. In that situation, we are of the opinion that the giving of the instruction, while not good practice, was not such error as would warrant the reversal of a judgment for the plaintiff. As was pointed out in Scott v. Farlin & Orendorff Co., 345 Ill. 468, the effect of Section 78 of the Practice Act (Oahill's Ill. Statutes, ch. 110, sec. 78) is "to require the presumption to be indulged in such cases, (where there was a general verdict under several





counts, one of which was bad) that the verdict was based on the good counts to which the evidence was applicable." Even though, therefore, evidence was not submitted in the case at bar, in support of one of the counts of the declaration, we are obliged to indulge the presumption that the verdict of the jury, for the plaintiff, was based on those counts to which the evidence presented was applicable. Further objections are urged by the defendant to those counts also, but in our opinion it would serve no purpose to refer to them in detail in this opinion. It is sufficient to say that we are of the opinion that those counts were good and it is not contended that they were unsupported by the evidence.

Further complaint is made by the defendant of another instruction given by the trial court, reading as follows:

"The court instructs the jury that it is lawful for individuals to drive and pass and repass upon public streets and highways, and in doing so to cross and recross street car tracks, exercising ordinary care in doing so, and that it is the duty of servants of the street car companies, operating cars upon public streets to be on the lookout and take reasonable measure to avoid injuries to persons rightfully driving on the street."

As to this instruction, it is contended that the declaration contained no allegation to the effect that the defendant failed to maintain a lookout. In our opinion, this is not a valid objection to the instruction. It does not tell the jury that it was the duty of the defendant to "maintain" a lookout, but that it was its duty to "be on the lookout." The first count of the declaration complained of the alleged negligence of the defendant in carelessly driving its car over the Home avenue crossing, at a higher rate of speed than was



...and it will not be that the results are based on  
the fact alone that the evidence was taken from  
the... evidence was not obtained in the same way  
as, in support of one of the... of the...  
are obliged to... the... that the...  
the... the... the...  
the... the... the...  
... of the... to...  
... it would seem to... in detail in  
this... It is... to say that we are of the  
... that... and it is not...  
that they were... by the...

...in... to... of...  
... by the... in...

...the... the...  
... to... and...  
... and...  
... it is...  
... and...  
... and...  
... and...  
... and...  
... and...  
... and...

...it is... that the  
... in... the...  
... in...  
... the...  
... the...  
... the...  
... the...  
... the...  
... the...  
... the...

prudent under the circumstances; and the third count of the declaration complained of the alleged negligence of the defendant, in that its servants "so carelessly, recklessly and improperly drove and managed the said street car, without slackening the speed thereof, or ringing a bell or sounding a gong, giving any notice or warning of the approach of the said car," that by reason thereof, the plaintiff was injured. These allegations involved the general question of whether the motorman of the car in question was "on the lookout," and the question of whether he had taken reasonable measures to avoid the collision.

Further complaint is made of another instruction given the jury by the trial court, reading as follows:

"If the jury find, from the preponderance of the evidence, that the plaintiff was injured, as charged in her declaration, by reason of the alleged negligence of the defendant, and that at and before the time of receiving such injury the plaintiff was in the exercise of ordinary care and caution for her own safety, and that when injured she was riding in the automobile in question with her husband then, even though it should appear that her husband was guilty of some want of care that contributed in some measure toward the bringing about of the accident in question, such want of care, if any, on the part of plaintiff's husband, will not be imputable to the plaintiff."

That instruction is a correct statement of the law, and to give it was not error. In Cox v. Fox, 294 Ill. 538, a judgment for the plaintiff was reversed, among other reasons, for the giving of a similar instruction, in view of the evidence there presented. In the state of the evidence in the case at bar we are of the opinion that the giving of the instruction was not improper.

By another instruction the court told the jury that,



to the fact that the Government has not been able to secure the necessary funds to carry out its policy of non-interference in the internal affairs of other countries. The Government has been forced to resort to the use of force in order to maintain its position in the world. This has led to a series of wars and conflicts which have caused the death of millions of people. The Government has also been forced to resort to the use of force in order to maintain its position in the world. This has led to a series of wars and conflicts which have caused the death of millions of people.

Further complaint is made of lack of information given the help of the trial court, resulting in delay.

It is the duty of the Government to protect the people from the danger of a revolution. The Government should not only protect the people from the danger of a revolution, but it should also protect the people from the danger of a revolution. The Government should not only protect the people from the danger of a revolution, but it should also protect the people from the danger of a revolution. The Government should not only protect the people from the danger of a revolution, but it should also protect the people from the danger of a revolution.

[illegible]

if they found the issues for the plaintiff, they might award her, as damages, such sum as in their judgment, under the evidence and instructions of the court, might be a fair compensation for the injuries she had sustained, if any, so far as such damages were claimed and alleged in the declaration. Here again we have an instruction referring to the declaration, and the point made is that the declaration alleged numerous injuries which were not supported by the testimony and it is argued that if the jury "had got hold of the declaration at any time" they would have been advised of some injuries, which were alleged therein, but as to which there is no testimony. As was pointed out by the Supreme Court in Krisger v. Aurora, Elgin & Chicago R. R. Co., supra, "The theory in the cases in which the instruction (one making reference to the declaration) has been held unobjectionable is, that it merely refers the jury to the declaration to ascertain what facts are averred and orders a verdict if such facts have been proved." Of course, the jury in the case at bar did not see the declaration which the plaintiff had filed and did not know what damages she claimed therein, and the only object in making reference to the declaration, was to advise the jury, in a general way, that the plaintiff could not recover any damages except those claimed in her pleading, and the instruction did not warrant the awarding of any damages except such as were warranted "under the evidence and instructions of the court." There was no error involved in this instruction.

During the trial of the case, some evidence had been presented, over objection of counsel for the defendant, to the effect that there was no witness at the crossing in





question and no one there to indicate the approach of the car. In this connection, the defendant requested the court to instruct the jury as follows:

"The defendant is not charged by the pleadings in this case with any negligence regarding the failure to maintain gates or a watchman or signals at the crossing, and there can be no recovery by the plaintiff against the defendant for any failure to maintain gates or a watchman or signals at the crossing where the accident occurred."

The court refused this instruction and this also was assigned as error. It appears from the record that at the time the instructions were being examined by the court and counsel for the defendant was urging the giving of this instruction, the court stated that the instruction would be given unless counsel for the plaintiff would state to the jury, in connection with his closing argument, that the plaintiff made no claim against the defendant because of the failure to maintain gates, a watchman, or signals at the crossing. Counsel for the plaintiff stated that he would so state to the jury, whereupon the court marked the instruction refused. In connection with his closing argument, counsel for the plaintiff did make the statement in question to the jury. Technically, it may well be said, as counsel for the defendant argues, that this statement did not take the place of the instruction, and in our opinion the defendant was entitled to the instruction and it should have been given. We are of the opinion, however, that the action of the trial court in this regard was not such as to warrant a reversal of this judgment. In view of all that took place, it cannot be considered that in returning their verdict the jury based it, in any respect, upon the absence of gates or a flagman at the crossing. There





had only been slight reference in the testimony to that subject, and it must have been entirely clear to the jury, that the claim of the plaintiff was that the car was operated over this spot in a negligent manner, and that by reason of that and that alone, the plaintiff was claiming damages for her injuries.

The further point is made by the defendant in support of its appeal, that the plaintiff was permitted, over its objection, to show her inability to pay for certain osteopathic treatments she had received after the occurrence in question. During her cross-examination it was brought out that the plaintiff had received these treatments, and on re-direct examination she was asked how many treatments of this kind she had received and she replied that there were three, and she was then asked why she discontinued them and she replied that it was because she could not afford them. This was not proper re-direct examination, as it had not been brought out on cross-examination that the plaintiff had taken only a few treatments and then discontinued them. There was, therefore, no occasion for any explanation as to why she had not taken more of them. We see no reason, however, for disturbing the judgment by reason of this matter, which was quite trivial. There is no contention made that the damages are excessive.

For the reasons given, the judgment of the Superior court is affirmed.

AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.





218 - 28494

SARAH ALTHAUSEN,

Appellee,

v.

SARAH KOHN, ET AL On appeal of  
SARAH KOHN,

Appellant.

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

234 I.A. 636

Opinion filed June 11, 1924.

MR. JUSTICE THOMSON delivered the opinion of  
the court.

The complainant, Sarah Althausen, filed a bill in equity to foreclose a mortgage given by the defendant Sarah Kohn, to secure her note in the sum of \$10,000. The defendant interposed a defense of usury, and made a tender in open court of the amount which she admitted was due on the loan. This tender was refused. It was alleged by the defendant in her answer, that although she signed the principal note in the sum of \$10,000, the indebtedness was in fact only \$9,410, as that was the amount received by her on the loan, the balance of \$590.00 being retained by the complainant, this making the loan usurious. The issues were referred to a master, who found the amount due on the loan to be \$9,750. Following the master's report, a decree was entered accordingly in favor of the complainant. To reverse that decree the defendant has perfected this appeal.

In support of her appeal the defendant contends that there are two substantial variances between the bill of complaint and the evidence and the findings of the master. The bill of



FILE - 10000

ORIGINAL ATTACHED

Exhibit

1

EXHIBIT NO. 1  
FILED IN CASE NO. 10000

Exhibit

2341.1.888

Opinion filed June 11, 1964.

IN RE: THE ESTATE OF JAMES H. HARRIS, JR.

FILE NO. 10000

The complaint, dated January 1, 1964, is filed.

It is requested that the court order the defendant to

show cause why he should not be held liable for the amount of \$10,000. The

defendant has failed to show cause why he should not be held liable for the amount of \$10,000.

The court has found that the defendant is liable for the amount of \$10,000.

It is ordered that the defendant pay the amount of \$10,000 to the plaintiff.

The court has found that the defendant is liable for the amount of \$10,000.

It is ordered that the defendant pay the amount of \$10,000 to the plaintiff.

The court has found that the defendant is liable for the amount of \$10,000.

It is ordered that the defendant pay the amount of \$10,000 to the plaintiff.

The court has found that the defendant is liable for the amount of \$10,000.

It is ordered that the defendant pay the amount of \$10,000 to the plaintiff.

Very truly yours,

1. The court has found that the defendant is liable for the amount of \$10,000. It is ordered that the defendant pay the amount of \$10,000 to the plaintiff.

complaint alleged that the loan had been made to the defendant by a Mrs. Schatz, who was the complainant's daughter, and that at a later period the complainant had purchased the loan and was the legal owner of it, at the time of the filing of the bill. The master found from the evidence that the loan was negotiated with the complainant in the first instance and not with her daughter. In our opinion, this is quite immaterial. That the complainant was the legal owner and holder of the indebtedness at the time of the filing of the bill is not questioned. At the time application was made for the making of this mortgage, complainant was preparing to leave for New York and shortly thereafter she went to New York. There is some confusion in the testimony on the question of whether the loan was consummated with the complainant or with her daughter, after the complainant had left for New York. It seems from the evidence in the record that the mother and daughter had a joint bank account, and their accounts were, at least to some extent, intermingled, and the daughter was in the habit of negotiating loans in behalf of her mother. Whether the arrangements for the making of the loan were completed with the mother or with the daughter, or whether the latter transferred the loan to her mother, in no way affects the fact that the defendant got the money and is now indebted to the complainant to the extent of the loan.

It is also contended that a variance exists by reason of the fact that the bill alleges that the defendant was indebted to the complainant in the sum of \$10,000, whereas the master found the amount of the indebtedness to be \$3,750. Such a fact does not create a variance, of course. In this case there was a dispute between the parties as to various items,



...alleged that the fact had been made to the ...  
...the ...  
...at a later period the ...  
...was the legal owner of ...  
...will. The ...  
...negotiated with the ...  
...with her daughter. In ...  
...That the ...  
...mistaken as to the ...  
...questioned. At the ...  
...of this ...  
...look and ...  
...even ...  
...the fact ...  
...however, after the ...  
...seems from the ...  
...depression had a ...  
...at least to some ...  
...in the ...  
...within the ...  
...closed with the ...  
...later ...  
...the fact that ...  
...to the ...

...It is ...  
...verbal of the fact ...  
...involved in the ...  
...may have ...  
...in ...

the complainant contending that the defendant was indebted to her in the full amount of the face of the principal note, and the defendant contending that she was entitled to several credits. If it be found that the defendant was entitled to one or more of these credits, that could in no sense be said to be a variance. It was not denied that the defendant did execute the principal note in the sum of \$10,000.

The chief defense relied upon by Mrs. Kohn is that of usury. The evidence shows that the complainant and her daughter were represented by a lawyer named Diamond. The complainant insisted upon having her lawyer prepare the mortgage papers, for which she told the defendant or her brother who was representing her, there would be a charge of \$10.00, which she would expect the defendant to stand. When the parties were ready to close up the loan, the complainant or her daughter gave Diamond a check for \$9,410.00. Diamond retained the \$10.00 and gave the defendant his check for the balance of \$9,400.00 less \$4.15 for revenue stamps and recording fees. The complainant retained the balance, \$590.00, and it was this which is the basis of the defense of usury, interposed by the defendant.

The master found that the defendant through her brother negotiated the loan through a broker named Rubin and that his commission amounting to \$300 was paid to him by the complainant out of the \$590.00 she retained at the time she turned the proceeds of the loan over to the defendant. It is the defendant's position that the evidence was such as to show that Rubin was not acting in the capacity of a broker for the defendant, but was, in fact, the complainant's agent. The evidence showed that Rubin was in the real estate business





and had known all the parties involved for some time. He testified that the defendant's brother, who, according to the evidence was seeking to arrange this second mortgage for his sister, asked the broker where he could get a \$10,000 second mortgage on some property located on Madison street in the City of Chicago, and the broker suggested the complainant. Apparently the defendant's brother saw the complainant and the latter was unwilling to make the loan requested and a few days later the defendant's brother saw Rubin again and told him of the result, and he then told Rubin he would like to get a loan on some other property located on Roosevelt Road, and Rubin suggested that he go and see the complainant on that proposition. A few days after that he again saw Rubin and told him that he had arranged the loan with the complainant. It appears, that in the meantime, the complainant's daughter, Mrs. Schatz, had called Rubin up and asked him what he thought of the security and whether he felt the loan would be a safe one and he told her that it was all right, that he had sold this property to the Kohns and knew what they paid for it, and apparently, on Rubin's recommendation, the complainant accepted the application for the loan. Rubin further testified that Mr. Kohn told him he had agreed to pay \$300 as a commission for the making of the loan and that he had spoken to complainant or her daughter about taking care of his (Rubin's) fees in the case and that he said something about the witness going over to the complainant or her daughter to get his commission. He further testified that he received \$300 as his commission on the loan and that the usual rate on second mortgage loans was 10% per year, and further, that it is the custom with regard to such loans, to make the buyer pay all expenses incident to



[illegible]

the loan. Kohn testified that he did not expect to pay Rubin a commission and that when he discussed the making of the loan with the complainant, the latter said nothing about paying Rubin a commission. Mrs. Schatz testified that Kohn first saw her mother about making the loan on the Madison street property, and that this loan was <sup>not</sup> made, and about three weeks later Mr. Kohn returned and saw the witness about the loan that was made; that Kohn stated that Rubin had sent him to them; that Kohn wanted to know what it would cost to make the loan and the witness said she would expect him to pay all the expenses; that she would want insurance and a guaranty policy, and also that she would want Mr. Diamond to look over the papers and see if everything was all right and that she would also expect Rubin's commission to be paid; that Kohn said he didn't care to know anything about expenses but only wanted to know what it would cost, - "You pay out the expenses," and she told him it would cost \$300; that he said he supposed that was as cheap as they could get it anywhere, and he said he would make the loan with them, whereupon the witness asked him to give her lawyer a legal description of the property so he could look it up and see if it was all right; that Mr. Diamond made out the papers and looked up the records; that the expenses in connection with the preparation of the papers was \$10.00, and for looking up the records and examining the title, \$40.00; that she included the \$10.00 item for the preparation of the papers, in the check for \$8,410.00 which she gave to Diamond, but she did not pay the \$40.00 until later as he was doing work for them right along and she paid him this charge in connection with other items which she and her mother owed him. She also testified to the payment of





\$300.00 to Rubin as his commission. On cross-examination, she testified that in making this loan she relied on Rubin's judgment about Kohn's integrity and also as to the value of the property. She testified that she and her mother frequently bought mortgage paper, usually through a broker, and that Rubin had negotiated a good many loans for them.

In our opinion, the finding that Rubin was not representing the complainant in this transaction but must be considered as the defendant's broker and entitled to a commission, was fully warranted by the evidence. Kohn was seeking to place this second mortgage loan and for that purpose made application to Rubin and the latter referred him to the complainant. Rubin had placed other loans for Kohn. He testified that he placed other loans for him with the Mid-City Trust & Savings Bank. He also testified that he had sold several pieces of property for Kohn. The evidence does not show, nor is it claimed by the defendant, that the complainant got any part of this commission. Mrs. Schatz testified that she told Kohn she would expect him, to pay Rubin's commission, together with other items she mentioned he would have to stand out of the proceeds of the loan, and that he, in substance, wanted to know what deduction it would be necessary to make to cover these items, she to pay these expenses direct, and she told him it would be \$300.00, to which he agreed. In effect, therefore, the payment of a \$300.00 commission out of the proceeds of this loan by the complainant or her daughter, was at the direction or request of the defendant, made through her brother. It is true that Kohn's testimony in some respects contradicts that submitted in behalf of the complainant. However, it is for



[illegible][illegible]

the defendant to make out her defense of usury, by a preponderance of the evidence, and in our opinion, she failed to do so as to this item of \$300.00, which went to Rubin as a commission. Under all the circumstances to which we have referred, it would seem that Rubin should be regarded as the defendant's agent rather than the complainant's and it was quite proper for the complainant to require the defendant to take care of that commission, out of the proceeds of the loan. Complainant has called our attention to the case of Fayne v. Hercomb, 100 Ill. 611. We do not regard that case in point, for there it was clearly shown that the broker involved was the agent of the lender rather than the borrower. In our opinion, the cases of Eikholtz v. Wolf, 103 Ill. 363, and Hoyt v. Pawtucket Institution for Savings, 110 Ill. 390, involved situations similar to the one presented in the case at bar, and in those cases it was held that where, at the borrower's direction or request, amounts were held out of the proceeds of the loans for the purpose of paying commissions to agents or brokers who had acted in the negotiations in behalf of the borrowers, it could not be considered as making the loans usurious.

In our opinion, the master also correctly found that Mr. Diamond made a charge of \$40.00 for examination of the records in the recorder's office, so as to ascertain the condition of the title, which was a fair and reasonable charge for his services, and that this was a legitimate and proper deduction for that purpose, and did not make the loan usurious.





The master further found that the complainant was within her rights in demanding the production of a good abstract of title or guaranty policy on the property and that she might properly have procured the same and paid for it out of the proceeds of the loan, with the item of \$250.00 which was retained for that purpose, but the master further found that the complainant had satisfied herself as to the title of the property, through the examination made by Mr. Diamond of the records in the Recorder's office and that she had not paid out any part of the \$250.00 for an abstract of title or guaranty policy covering the loan, and that, therefore, said payment of \$250.00 should be credited upon the principal indebtedness of \$10,000 and that interest should be charged from the date of the principal note, upon the sum of \$9750.00. It is usual in all loans such as the one involved here, for the borrower to furnish an abstract of title or a guaranty policy covering the loan. Mrs. Schatz testified that she mentioned this as one of the requirements, when Mr. Kohn asked how much it would cost to procure the loan from her or her mother, and these items were items to which Kohn agreed, according to her testimony. We are not prepared to say that the fact that ultimately they were not insisted upon but that complainant was satisfied to rely upon her lawyer's examination of the records in the Recorder's office, indicates any intention upon the complainant's part to gain a usurious return on this loan. In determining whether the essential elements of usury are present in a given case, the intention of the parties, as they are made to appear from the facts and circumstances, may be considered in connection with all the other evidence in the case. Elmore v. Grant, 234 Ill. 215.



The matter further shows that the complaint

was within her rights in demanding the restoration of a bond  
amount of \$1000 on account of the property and that  
she might properly have received the same on July 15  
out of the proceeds of the bond, with the same at that time.  
which was retained for that purpose, but the matter further  
shows that the complainant had notified herself as to the  
issue of the property. Whereby the complainant says by the  
statement of the fact that in the defendant's return she has the  
fact that she was paid of the \$1000 on the amount of  
\$1000 on account of the property and that she had the  
same, with interest of \$100.00 should be returned to her.  
Defendant's statement of \$100.00 and that interest should  
be changed from the date of the principal note, when the same  
of \$100.00. It is noted in all books that on the 15th  
of July 1891, the same amount is shown as interest of  
\$100.00 on a property note covering the bond. The same further  
shows that the defendant paid on the 15th of July 1891, when  
the same note was made it was in order to prevent the fact from  
her or her mother, and therefrom there is no right to  
agree, according to her testimony. It was not necessary to  
say that the fact that ultimately they were not included was  
but that complaint was retained to July 15th when the property  
proceeds of the property in the defendant's return, together  
with interest upon the complainant's note to July 15th was  
shown on this fact. It is interesting to note the statement  
element of fact and present as a given fact, the defendant  
at the period, as they are made to appear from the facts and  
circumstances, may be considered in connection with all the

The offense of usury is penal in its nature and it must be proven as laid, in a suit in chancery as well as in an action at law. Goodwin v. Bishop, 50 Ill. App. 145. To make out such a defense, the burden is on the defendant to show by a preponderance of the evidence that the usurious elements of the contract, as set forth in the pleadings, were present in the contract which the parties actually entered into. In our opinion the master properly found, and the chancellor properly held, that the defense had not thus been made out by the defendant in the case at bar.

For the reasons stated, the decree of the Circuit Court is affirmed.

DECREE AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.





327 - 28503

FRANK SULLIVAN , et al,  
Appellants,

v.

SIGMOND GERNERBAUM,  
Appellee.

3869a  
234 I.A. C36

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed June 11, 1934.

MR. JUSTICE THOMSON delivered the opinion of the court.

By this appeal the plaintiffs seek to reverse an order of the Municipal Court, vacating and setting aside a judgment for \$1927.00, which they had recovered against the defendant. The order appealed from was entered on a petition filed by the defendant more than thirty days after the judgment in favor of the plaintiffs had been entered.

The plaintiffs had been tenants of the defendant, under a lease for a term beginning May 1, 1921, and ending April 30, 1923, and in connection with this tenancy and under the terms of the lease, the plaintiffs had deposited \$1300.00 with the defendant as a guaranty for the performance of the covenants of the lease. The lease bore the date, April 6, 1921, but it was apparently executed May 6, 1921, for it bears the notation that it was executed "in presence of W.J. McCullough, May 6th, 1921." By the terms of the lease the plaintiffs covenanted, among other things, that no intoxicating liquors would be sold, stored, kept, distributed or given away in the demised premises, during the term of the lease.





The plaintiffs began this suit about a month after the expiration of the lease, seeking thereby to recover the \$1800.00 deposited by them with the defendant, as a guaranty for their performance of the covenants contained in the lease, together with interest thereon, the defendant having refused to return the money as requested. By their statement of claim the plaintiffs alleged that they had performed all the covenants contained in the lease. The defendant filed an affidavit of merits, admitting that the \$1800.00 in question had been deposited by the plaintiffs with the defendant, as alleged, but the defendant denied that the plaintiffs had performed the covenants contained in the lease, and alleged "that the plaintiffs sold or caused to be sold on the premises described in the lease \* \* \* intoxicating liquor, contrary to and in violation of the law and of the agreement of the plaintiffs with the defendant." In this affidavit the defendant further set forth that as a result of the alleged sale of intoxicating liquor upon these premises, by the plaintiffs, a bill for injunction was filed by the Federal authorities against the plaintiffs and the defendant, in the United States District Court, to enjoin the sale of intoxicating liquor upon the premises, and for abatement, as a result of which the defendant had sustained damages in excess of the sum sued for.

No jury demand was filed by either party and on October 3, 1932, the case was reached for trial, in due course, without a jury. The defendant failed to appear at the trial and after hearing the evidence the trial court found the issues for the plaintiffs, assessed their damages at the sum of \$1937.00



[illegible]

THE UNIVERSITY OF CHICAGO PRESS

and entered judgment for that amount in favor of the plaintiffs. On November 15, 1922, the defendant submitted a motion to vacate the judgment but before this motion was disposed of, namely, on December 1, 1922, the defendant was given leave to file a petition to vacate the judgment, and upon the filing of this petition the plaintiffs demurred to it. The trial court overruled the plaintiffs' demurrer, and, the plaintiffs electing to stand by the demurrer, the court entered the order appealed from, granting the relief prayed for by the defendant in his petition, vacating and setting aside the judgment which the plaintiffs had recovered on October 3, 1922.

The petition of the defendant on which the order appealed from was entered, set forth that at the time the defendant's appearance was entered, it had been the intention of the defendant's attorney to ask for a jury trial and to make such demand in writing; that, according to the office copy of the defendant's appearance, the demand for a jury trial appears to have been made; that since the filing of the defendant's appearance it had been the belief of the defendant's attorney that the suit was to be tried by a jury; that no jury calendar had been prepared at any time since the commencement of this suit and that it would not have been reached for trial before a jury, up to the time of filing the defendant's petition nor until the next jury calendar had been made up. By his petition the defendant further set forth that neither he nor his attorney was aware of the fact that the case had been set for trial on October 3, 1922, or that judgment had been entered in the case at that time, and that no knowledge of such judgment came to either the defendant or his attorney, until after the service



[illegible]

of a writ of execution on the defendant on November 13, 1923. The defendant further set up in his petition, that the judgment in favor of the plaintiffs was erroneous, in that it exceeded the ad damnum stated in the praecipe and summons, as well as the amount claimed in the plaintiffs' statement of claim.

By his petition the defendant further set forth that he had a good defense to the plaintiffs' claim, which was that the plaintiffs sold intoxicating liquors on the leased premises, contrary to the terms of the lease and in violation of the United States' laws and that by reason of "such sale" the Federal authorities had filed a bill in equity against the plaintiffs and the defendant, as owner of the premises, on April 22, 1921, on which date a temporary injunction was issued in the Federal Court, enjoining the plaintiffs from selling intoxicating liquors on the premises; that a final hearing on that cause was heard in July 1923, at which time the temporary injunction was made permanent and the defendant was enjoined from occupying or using the premises for a year thereafter. It was further alleged by the defendant in his petition, that the plaintiffs had committed the acts referred to without his knowledge or consent, and that by reason of the premises having been closed by the Federal Court, the defendant had been unable to occupy or rent the premises, as a result of which, he had been damaged to an extent in excess of the amount claimed by the plaintiffs in their suit.

It is provided by section 31 of the Municipal Court Act that if no motion to vacate, set aside or modify a judgment entered in the Municipal Court, shall be submitted within



all a state of suspension for the balance of January 11, 1905.  
The defendant further says in his petition, that the judge  
sent in favor of the plaintiff was erroneous, in that it  
exceeded the \$10,000 stated in the petition and returned to  
well as the amount claimed in the plaintiff's statement of claim.

By the petition the defendant further says that  
that he had a good defense to the plaintiff's claim, and  
was that the plaintiff's wife had been injured in the  
lumber business, contrary to the terms of the lease and in  
violation of the United States laws and that he would be  
"very glad" the federal authorities had tried a bill to  
equity against the plaintiff and his attorney, as well  
of the payment, on April 14, 1905, on which date a judgment  
was entered in the federal court, requiring  
the plaintiff to pay the defendant the sum of \$10,000.  
Further that a final judgment of that court was made on  
July 1, 1905, on which date the defendant's judgment was made  
permanent and the defendant was required to comply with  
within the provisions of a good contract. It was further  
stated by the defendant in his petition, that the plaintiff  
had committed the same offense as himself and was  
in violation, and that by reason of the plaintiff's breach of  
contract with the defendant, the defendant had been obliged to  
pay on June 1, 1905, as a result of which, on June 1, 1905,  
the defendant is an officer in charge of the same estate  
of the plaintiff in said case.

It is further by petition of the defendant that  
and that it is wrong to require any more on behalf of the

thirty days after the judgment is entered, it shall thereafter not be vacated, set aside or modified, except on appeal or writ of error "or by a bill in equity, or by a petition to said Municipal Court, setting forth grounds for vacating, setting aside or modifying the same, which would be sufficient to cause the same to be vacated, set aside or modified, by a bill in equity;" provided further, that all errors in fact, which might have been corrected by a writ of error coram nobis, at common law, may be corrected by motion in the manner provided by law for similar cases, in the Circuit Court. The petition submitted by the defendant in the case at bar, was one purporting to set forth grounds for vacating the judgment recovered by the plaintiffs "which would be sufficient to cause the same to be vacated, set aside or modified by a bill in equity," as provided in the section referred to.

Citation of authorities is not needed in support of the well established proposition that in order to obtain relief from a judgment at law, in a court of equity, one must show that he has a good defense to the action at law and that the judgment was the result of some mistake, fraud or accident, unmixed with any negligence on the part of the party seeking the equitable relief, and against whom the judgment at law was entered. In our opinion, the petition submitted by the defendant in the case at bar was subject to the demurrer interposed, both because it showed on its face that the failure of the defendant to appear at the trial of the action at law was due to the negligence of his agent, and also because the petition failed to show that the defendant had a good defense to the action at law. Counsel, who had been retained to represent the





defendant in the action at law, intended filing demand for a jury trial but for some reason that was not done and this resulted in the default judgment being entered against the defendant, and thus the defendant's default must be charged to the negligence of the defendant's representative, and it may not be said to have resulted from such an accident or mistake as can be made the basis of a bill in equity, to set aside the judgment, or a petition in the Municipal Court in the nature of such a bill. Fuller v. Little, 89 Ill. 222; Allen v. Smith, 72 Ill. 331; Clark v. Ewing, 93 Ill. 572; Ward v. Duxham, 134 Ill. 126.

Furthermore, it appears from the record that the plaintiffs deposited the \$1800.00 with the defendant, to secure their observance of the covenants of their lease with the defendant, for a term beginning May 1, 1921. By his petition, the defendant complains that the plaintiffs sold liquor on the premises, contrary to the terms of their lease and agreement with him, and that by reason of "such sale" the Federal authorities had instituted injunction proceedings on April 22, 1921. Necessarily, the offenses alleged in the bill filed by the Federal authorities, must have taken place prior to the time the bill was filed, which was before the term covered by the lease which the plaintiffs made with the defendant, and in connection with which the \$1800.00 was deposited. It is nowhere alleged by the defendant, either in his affidavit of merits or in his petition, that the plaintiffs went into possession of the premises prior to the date of the beginning of the lease. This is immaterial in any event for the covenants of the lease cover the period of the lease only. It is immaterial





when the lease was executed or when possession was taken.

So far as the amount of the judgment being in excess of the ad damnum is concerned, it is sufficient to say, first, that such an error could not be availed of by the defendant, in a petition in the nature of a bill in equity, filed more than thirty days after the entering of the judgment, under section 31 of the Municipal Court Act; and second, the judgment was for the correct amount of principal and interest due. There is nothing in this record to show that the point was made in the trial court at the trial, that this amount exceeded the ad damnum. It therefore may not be urged now. Jones & Laughlin Co. v. Graham, 273 Ill. 377.

For the reasons stated, the order of the Municipal Court appealed from, is reversed and the cause is remanded with directions to expunge the order in question from the records of that court.

ORDER REVERSED AND CAUSE REMANDED WITH DIRECTIONS

TAYLOR, F. J. AND O'CONNOR, J. CONCUR.





230 - 28506

WALTER ZALESKI,

Appellee,

v.

THEOPHIL KIELBASINSKI,

Appellant.)

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

3870a  
234 I.A. 636

Opinion filed June 11 1924.

MR. JUSTICE THOMSON delivered the opinion  
of the court.

By this appeal the defendant seeks to reverse a judgment entered in the Municipal Court of Chicago in favor of the plaintiff for the sum of \$851.08. This judgment was entered on a judgment note for \$800, with interest amounting to \$31.08, and \$20.00 attorney's fees. The judgment was entered on September 1, 1922. On October 14, following the defendant made a motion to vacate the judgment entered against him by confession, and in support of that motion he presented an affidavit setting up an alleged failure of consideration for the note sued upon. The note was dated November 8, 1921. By this affidavit the defendant set forth that he purchased a grocery and market from the plaintiff, located on premises known as 1820 Courtland Street, Chicago, at a price of \$3550.00, of which \$1750.00 was paid in cash and the balance of \$800.00 was paid in the form of the note involved in this case; that the \$1750.00 represented the consideration for the stock of merchandise in the store and that the \$800.00 was given in payment for the lease on the premises, which the plaintiff agreed was



Page - 100

SECTION THREE

CHAPTER

ARTICLE

880 A. 1. 38

SECTION TWO

Opinion filed June 11 1934.

THE COURT, having reviewed the record

of the case,

is of the opinion that the judgment

of the court in the case of the

State of New York against the

People of the County of New York

is affirmed, with costs to the

People of the County of New York

and the judgment is affirmed

with costs to the People of the

County of New York.

It is so ordered.

Given under the great seal of the

State of New York, at Albany,

this 11th day of June, 1934.

JOSEPH P. KELLY, Chief Justice.

ALBANY, N. Y.

1934.

to be assigned to the defendant by the plaintiff, who undertook to obtain the consent of the landlord to the assignment; that the lease covered the store and living rooms in the rear, for the period of four and one-half years, and that it had a fair market value of \$800, which was the price agreed upon between the parties; that in the bill of sale covering this transaction, a provision was inserted that in case the plaintiff should not assign the lease nor be able to secure the landlord's consent to the assignment, then the entire transaction would be rescinded and the cash and note returned to the defendant and that the note had been placed in escrow with certain attorneys pending the obtaining of the assignment of the lease with the landlord's consent. Defendant's affidavit set forth that the landlord refused to consent to the assignment of the lease and that on September 18, 1932, the landlord served the defendant with a 60 days notice, declaring the tenancy of the store and the rear rooms terminated on December 1, 1932, by reason of the attempted assignment of the lease; that the plaintiff "has refused and still refuses to assign, transfer or even deliver the said lease unto this affiant" and that defendant had been unable to obtain the lease from the plaintiff, which was the consideration expressly provided for in the note, and that the plaintiff had given no other consideration for the note. The defendant further set forth in his affidavit that the plaintiff had removed \$300 worth of merchandise from the store in question; and he further set forth that without obtaining the lease for the period agreed to, he was unable to sell the store or to continue to operate it "or to defend a suit in forcible entry and detainer of the said landlord."



[illegible]

In our opinion the affidavit failed to set out a good defense to the plaintiff's action and the trial court did not err in denying the defendant's motion to vacate the judgment which had been entered against the defendant by confession. It is apparent from the defendant's affidavit that he purchased the store from the plaintiff on November 8, 1931, and that he went into possession of the store and was still in possession of it at the time he executed his affidavit, filed in support of his motion to vacate the judgment, which was almost a year after, namely, October 13, 1932. It further appears from the defendant's affidavit that the landlord made no move to dispossess him (if he made any at all) until after the judgment by confession was entered. The affidavit does not set forth that the landlord has begun a forcible entry and detainer suit, or refer to any such suit having, in fact, been instituted. From all that appears from the defendant's affidavit, he was in peaceable possession of the premises for nearly a year after purchasing the store and giving this note and might well have some arrangement with the landlord which would operate as a good defense, if the landlord does seek now to oust him. In other words, the defendant's affidavit is conspicuous for the things which it omits. All that is included within it may be true and yet, although the defendant never secured an assignment of the lease itself, he has been in peaceable possession of the premises for nearly a year and may continue his possession. There would seem to have been a waiver on the part of the defendant and the landlord in the matter of the formal assignment of the written lease covering the premises in question.





In support of his appeal the defendant further contends that the judgment entered was void, in that the cognovit upon which the judgment was entered, was broader than the power of attorney executed in connection with the note. It is well established that in taking judgment on a judgment note, the power to confess judgment must be clearly given in the warrant or power of attorney executed in connection with the note and it must be strictly pursued, and that a departure from the authority conferred will render a confession void. In our opinion, however, there was no such a departure in the case at bar as to bring it within that principle. The power or warrant of attorney attached to the note authorized any attorney (1) to appear for the defendant and confess a judgment; (2) to waive and release all errors which might intervene in all such proceedings; and (3) consent to immediate execution upon the judgment, "hereby ratifying and confirming all that my said attorney may do by virtue hereof." In the cognovit which was entered by virtue of this power or warrant of attorney, the attorney representing the defendant (1) confessed the judgment; (2) released all the errors which might have intervened in entering up the judgment; (3) consented to an immediate execution; and (4) agreed that no writ of error or appeal should be prosecuted on the judgment entered and that no bill of equity should be filed to interfere with its operation. Cases to which the defendant has called our attention in support of his argument, are all cases in which the attorney confessing judgment departed from the authority contained in the warrant, in some



[illegible]

matter affecting the judgment itself, as where judgment was confessed on a note under a warrant or power of attorney executed in connection with a different note; or where the warrant of attorney was joint and the judgment confessed was a several judgment. It might be argued that the waiver of the right to appeal or file a bill in equity was void, as not being expressly included in the warrant or power of attorney, but that would not affect the validity of the judgment itself. It will be seen that, in fact, the defendant has perfected an appeal from this judgment and the plaintiff does not invoke the waiver of the right to appeal, included in the cognovit. In Tucker v. Gill, 61 Ill. 236, our Supreme Court quoted Lord Coke, to the effect that "where a man doeth that which he is authorized to do, and more, then it is good for that which is warranted, and void for the rest." Co. Litt. 258a. The court further pointed out that Judge Storey had observed in his work on Agency, Sec. 186, that Lord Coke had properly suggested that there were some exceptions and limitations to this rule, saying: "Where there is a complete execution of the authority, and something ex abundanti is added, which is improper, then the execution is good, and the excess only is void. But where there is not a complete execution of a power, or where the boundaries between the excess and the rightful execution are not distinguishable, then the whole will be void."

For the reasons stated, the judgment of the Municipal Court is affirmed.

AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.



noting without the judgment itself, as when judgment  
was contained in a case where a court of appeal or circuit  
was included in connection with a different case; or when the  
return of a party was filed in the judgment containing  
was a general judgment. It might be argued that the return  
of the right to appeal or file a bill in equity was void,  
as not being expressly retained in the return of power  
of attorney, and that would not affect the validity of the  
judgment itself. It will be seen that, in fact, the return  
and the judgment are equal. The return and the judgment  
will have not involve the return of the right to appeal, the  
included in the respective. In *Truitt v. Hall*, 111, 200,  
the Supreme Court stated that, as the return was  
"where a new doubt that it is as necessary to be, and  
more, than it is that the return is necessary, and will  
for the return. The return is necessary, and will  
and the return was removed in its own right, and  
that, that said that the return was removed in its own right, and  
was removed in its own right, and was removed in its own right,  
is a complete execution of the return, and was removed in  
itself as well, which is necessary, and the return is  
void, and the return was in void. But when the return is  
a complete execution of a court, as when the return is  
being the return and the return is necessary, and the return is  
void, and the return will be void."

For the reasons stated, the judgment of the court  
is affirmed.

Reversed, 111, 200, 111, 200.

366 - 28542

H. B. WILSON,

Appellee,

v.

YELLOW CAB COMPANY, a  
corporation,

Appellant.

3871a  
234 L.A. 636  
APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed June 11, 1924.

MR. JUSTICE THOMSON delivered the opinion of  
the court.

The plaintiff Wilson brought this action against the defendant, Yellow Cab Company, to recover the cost of repairing the damages to his electric automobile occasioned by a collision with a taxicab belonging to the defendant, which collision was alleged to have been caused by the negligence of the defendant's servant, and without any negligence on the part of the plaintiff's wife who was driving the electric automobile at the time in question. There was a verdict in the trial court for the plaintiff, fixing his damages at \$380.00. The plaintiff remitted the sum of \$60.25 and judgment was entered in his favor, in the Municipal Court for \$299.75. To reverse that judgment the defendant has perfected this appeal.

The collision in question occurred on the west side of Sheridan Road near the Edgewater Beach Hotel, in the City of Chicago. The hotel is located on the east side of Sheridan Road. There is an open parking space on the west side of Sheridan Road and a little to the south of the hotel entrance. There are two driveways into this parking space.



• *Sp. 11*

Copyright © 1994 by John Wiley & Sons, Inc.

For information call 800/441-2344 or visit us online at [www.4mat.com](http://www.4mat.com).

4. *Phragmites australis* (Cav.) Trin. ex Steud.[illegible]

The following is a list of the names of the persons who were present at the meeting held on the 1st day of January, 1900, at the residence of the undersigned, in the City of Chicago, Ill. The names are arranged in alphabetical order of the surnames. There is no special mention made of the names of the persons who were present at the meeting held on the 1st day of January, 1900, at the residence of the undersigned, in the City of Chicago, Ill. The names are arranged in alphabetical order of the surnames.

from Sheridan Road, the north driveway apparently being used as an entrance and the south driveway as an exit. These driveways are about 25 feet apart and the north driveway is about the same distance south of a point opposite the hotel entrances.

The plaintiff's wife, together with a Mrs. Clifford, was driving the plaintiff's car, south along the west side of Sheridan Road. The Yellow Cab in question was coming north along the east side of Sheridan Road. Before it reached a point opposite the north drive way leading into the parking space, it cut across in a diagonal direction toward this driveway. It passed in front of the electric automobile and the right rear wheel of the cab struck the right front wheel of the electric automobile, causing the damages complained of.

The plaintiff's wife testified that she first observed the cab when it was about 50 feet ahead of her; that she saw the cab chauffeur put his head out and turn diagonally across the street in front of her, and that she applied both brakes immediately and came to a stop; that the driver of the Yellow Cab "put on his speed to miss me and instead of that his back wheel hit the front wheel of my car." On cross examination she testified that she knew about the parking space and that cars were constantly turning in and out of that space; that she had been driving about 12 miles an hour and as she passed the hotel she came down to about 10 miles an hour. She further testified that when she first noticed the cab it was starting to turn over toward the west curb and was about 25 feet from the north



27

These drawings were shown to the artist and the artist  
used on an engraving and the engraving on a wall.  
The artist's name was John, the artist's name was John.

The following table, together with a map, illustrates the results of the investigation, and will show the way in which the various parts of the system are connected.

[illegible]

entrance to the parking space. One of the witnesses mentioned a woman who was standing on the sidewalk on the west side of the street, waving her hand at the cab, and there was some testimony to the effect that Mrs. Wilson and her friend turned to look at this woman. Mrs. Wilson was asked if she saw a woman standing on the street, on the west side, and she said she did not. Mrs. Clifford testified that when she first saw the Yellow Cab it was 40 or 50 feet away and that it ran in front of them; that when she first observed <sup>it</sup>, it was "turning right in front of us as we were going \* \* \* it was not in front of the parking space when it started to turn. It was probably 25 or 30 feet south of the parking space when it turned;" that Mrs. Wilson put her brakes on and tried to stop.

One Pegg, a conductor working for the Chicago Motor Bus Company, whose bus was standing in the parking space, testified that he saw the collision in question; that he saw the Yellow Cab when it was 100 or 200 feet south of the hotel and that "as he got just south of the hotel he started to turn over to the parking space on the west side of the street;" that as the cab got about to the center of the street, the electric automobile came along; that the cab was going across the street at an angle, headed northwest, and the right rear wheel of the cab hit the right front wheel of the electric car. On cross-examination he testified that when he first saw the cab it was 50 feet south of him and the electric was 20 to 25 feet north of the north entrance to the parking space; that the cab was turning across the street and had just





about reached the center of the street; that he could see by the course of the electric that the brakes were put on; that the electric car was going "about two miles an hour when the cab struck it."

One Wilkins testified that he was standing across the street from the hotel and first saw the cab when it was about 25 feet south of the hotel entrance; that the electric was going 10 or 12 miles an hour; that he thought there was a woman standing on the sidewalk waving her hand for the cab; that she was on the west side of the street; that there was a change in the speed of the electric automobile immediately before the collision and it almost came to a stop. On cross-examination he testified that when he first saw the electric car it was a little south of the hotel entrance and the cab was about 50 feet "the other side of the entrance;" that the cab made a turn before it got to the entrance of the parking space; that this turn was made about 40 feet south of the entrance; that Sheridan Road at this point is about 75 feet wide. He further testified that the electric car drove about 20 feet from the time the Yellow Cab first started to make the turn, up to the time of the collision. He again stated that he saw a woman on the west side of the street "waving her hand for a cab." He was asked if the ladies in the electric automobile turned to look at this woman and he said he did not know. He then stated that he believed they did, and he finally said that he did not see Mrs. Wilson look over toward the west when this woman was waving - "I don't think she did. She was looking straight ahead. I would not say that she did not look over toward the west."





One Parmelee, the manager of the garage and repair shop where the plaintiff's car was repaired, testified to the repairs, the parts that were replaced and the time involved in making the repairs and their cost.

For the defendant, one Jones testified that he was an adjuster and investigator for the defendant and that in the course of a conversation he had with Mrs. Clifford shortly after the occurrence in question, she stated that the first time she saw the taxicab "it was directly in front of their car."

One Witt, a driver for the Chicago Motor Bus Company, who was standing in the parking space at the time of the accident, said he first saw the electric car when it was about 100 feet from the point where the collision took place and that the next thing he observed was the Yellow Cab turning in; that at the time the cab turned in, the electric car was about 50 feet north of the entrance to the parking space; that he saw a car standing on the left side of the street facing south, about 10 feet away from the curb; that the driver of the electric car swung around the standing car and collided with the Yellow Cab, which was moving very slowly, while the electric car was traveling about 20 miles an hour, which speed it maintained up to the time of the collision.

The Yellow Cab chauffeur, Schlitz, testified that he turned around slowly toward the parking space, holding out his hand as he turned; that there was a car coming from the north which stopped for him; that Mrs. Wilson was driving the electric car pretty close behind the other car and "she swung around





on the right and hit me on the rear of the car at the right panel;" that at the time of the collision his cab was moving 3 or 4 miles an hour and the electric car was going 20 or 22 miles an hour and "the speed of the electric car was not changed as she came towards me." He then testified that at the time of the collision the two cars "stopped right there,- right where they came together." He further testified that the two ladies in the electric, were talking together.

One Fraber testified that he also was employed as a chauffeur for the defendant company and was standing in the parking space at the time of the collision in question; that the cab involved was going to turn into the parking space and at the time it made the turn the electric car was about 100 feet away, coming south at a speed of about 20 miles an hour while the cab was going 4 or 5 miles an hour; that the electric car continued at the same rate of speed and the front part of the electric car hit the rear of the cab.

One Peterson testified that he was a vehicle inspector and investigator for the defendant company and that his position with the defendant involved the duty "of investigating the damages of automobiles that have been involved in collisions", - presumably with Yellow Cabs. He then testified that he went to the garage where the plaintiff's electric car was taken after the collision in question, and looked it over. He testified in some detail as to the damages he found and he stated that his opinion was that the fair, reasonable and customary cost of making the repairs on the car at that time would be



—

at the right was 115 ft. at the base of the hill at the  
right hand, that at the top of the hill was 115 ft.  
was moving 1 on a roller on road and the electric car was  
going 60 or 65 miles an hour and the speed of the train  
this car was not changed as the road was 115 ft. at the  
right hand at the time of the collision the two cars  
"stopped right there" - right where they were stopped.  
The further testified that the two trains in the "stop"  
were falling together.

One further testified that he was not engaged  
as a spectator for the defendant's company and was standing  
in the waiting space of the train of the collision in ques-  
tion; that he was not involved in the collision and was not  
the driver and at the time it was the train of the electric  
car was about 100 feet away, moving north at a speed of about  
60 miles an hour while the car was going 115 ft. at the  
right hand the electric car consisted of the same kind of speed and  
the front part of the electric car hit the rear of the car.

One further testified that he was a reliable infor-  
mer and investigated for the defendant's company and that the  
collision after the defendant's company for duty but investigation-  
and the company of defendant's company was not involved in  
collision, - personally with the defendant's company. The further testified  
that he went to the garage where the defendant's electric car  
was taken after the collision in question and found it there.  
He testified in some detail as to the damage to the car and  
stated that the damage was that the "left" transmission and engine  
were damaged and that the car was not able to move.

\$100 to \$135.

On the conflicting testimony as we have outlined it above, we are not in a position to say, as a matter of law, either that Mrs. Wilson was negligent or that the defendant's chauffeur was free from negligence, nor could we say that the finding of the jury was against the manifest weight of the evidence on either of those questions. The question of Mrs. Wilson's care and the alleged negligence of the chauffeur, were properly left to the jury. In contending that the verdict is against the manifest weight of the evidence, counsel for the defendant contends that with the two vehicles as far apart as even Mrs. Wilson places them, at the time the chauffeur started to turn over she should have been able to avoid the collision. The jury did not reach that conclusion and we would not be justified in setting aside their finding on the theory that the jury's finding in this regard was against the manifest weight of the evidence. After all, estimates of witnesses as to distance are merely estimates, and the jury may well have taken into consideration the fact that such estimates are always difficult, but especially so when they involve two objects, both moving in the manner described in the testimony here.

The defendant further complains of certain remarks made during the closing argument to the jury by counsel for the plaintiff and of the action of the trial court in overruling the objections which were interposed at the time. These remarks were of three kinds. Plaintiff's counsel referred to



1910-1911

On the conflicting testimony as to how the  
it above, we are not in a position to say, as a matter of  
fact, either that Mr. Wilson was negligent or that the de-  
fendant's conduct was free from negligence, and would we  
say that the finding of the jury was against the defendant  
weight of the evidence on either of these questions. The  
question of Mr. Wilson's care and the alleged negligence of  
the defendant, were properly left to the jury. In consid-  
ing that the verdict is against the defendant weight of the  
evidence, counsel for the defendant contends that with the  
two verdicts as far apart as even Mr. Wilson himself seems  
at the time the defendant started to turn over the truck  
have been able to reach the conclusion. The jury did not  
reach that conclusion and we think not on finding in con-  
sidering their finding on the count, that the jury's finding  
in this regard was against the defendant weight of the evi-  
dence. After all, testimony of witnesses as to defendant's  
care was conflicting, and the jury may well have been inde-  
termined on the fact that both witnesses who always differ  
said, but especially as when they involve two subjects, both  
moving in the same direction in the foregoing case.

The defendant further complains of certain errors  
made during the closing arguments to the jury by counsel for  
the plaintiff and of the action of the trial court in dis-  
missing the defendant's motion for judgment at the time. These  
errors were all taken from the defendant's opening statement.

the fact that some of the jurors drove automobiles and he stated that those of them who did would probably be "astounded to think that the Yellow Cab Company would come in here and endeavor to deny and excuse the actions of this chauffeur in cutting across the street." He also remarked that "that is what they all do, and then he shot across the street." At another point in his argument counsel for the plaintiff referred to the driver of the Yellow Cab involved in this collision and said that it was to be expected that he would take the stand and maintain that the accident was not his fault, and he asked the jurors if they could imagine any Yellow Cab driver reporting to his company that he was responsible for an accident and he said in this connection that the cab driver wanted "to show you gentlemen and the company that it was not his fault. If it was his fault he would not be in their employ." The third remark complained of had reference to the witness who testified he was an inspector and investigator for the defendant and that the duties of his position had to do with investigating and estimating the damages to automobiles that had been involved in collisions. Counsel for the plaintiff referred to this witness as the defendant's "professional hired estimating witness." In concluding his remarks to the jury counsel stated that he thought it was an "imposition" and an "outrage" for the defendant to take up the time of the court, the jury and the witnesses, to the extent of two days, to demonstrate that the plaintiff was entitled to have the cost of repairing his electric automobile, paid by the defendant. In our opinion some of the remarks thus complained of were not improper while the objections which were interposed to others, might



[illegible]

better have been sustained. Counsel should, of course, not have gone outside of the record by remarking that going across the street is "what they all do" and also his remarks as to the inspector for the defendant, were hardly proper, in speaking of him as a professional, hired estimating witness. Counsel was probably making the intimation he was hired more as a witness than as an investigator and estimator, which was not at all warranted by the record. In our opinion, however, the situation presented by the remarks complained of is not such as to warrant our disturbing the verdict, and judgment.

For the reasons stated the judgment of the Municipal Court is affirmed.

JUDGMENT AFFIRMED.

TAYLOR, F.J. AND O'CONNOR, J. CONCUR.



better have been sustained. General Smith, of course, was  
 have been satisfied of the record by reviewing that being  
 across the street in that they all did not also the reason  
 on to the Inspector for the statement, were being made.  
 in speaking of him as a professional, since testimony was  
 given. General was previously making the statement in the  
 filed with as a witness that he is investigating and making  
 not, which was not of all contained in the record. In the  
 opinion, however, the situation presented by the records was  
 obtained it is not now as to review and identify the con-  
 sider, and perhaps,

For the reasons stated the payment of the balance

is not required.

THOMAS WATSON

THOMAS WATSON, JR., ATTORNEY

269 - 28545.

HARRY G. AUSTIN,

Appellee,

v.

HARRISON PARKER, ET AL,

Appellants.

3872a  
234 I.A. 637

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

Opinion filed June 11, 1924.

MR. JUSTICE THOMSON delivered the opinion of the court.

By this appeal the defendants seek to reverse a decree entered in the Circuit Court of Cook County, requiring them, as Trustees of the Co-operative Society of America, to pay the plaintiff, the sum of \$17,400. The suit was originally instituted against Harrison Parker, W. A. Hawkenson and John Coo, as Trustees of the Co-operative Society of America. Subsequently, Hawkenson and Coo ceased to be Trustees, but apparently, from the testimony of Coo, they continued their connection with the Society as "associates". It appearing that they had been succeeded as Trustees by Seymour Stedman and J. H. Wilkins, an order was entered at the time the cause was reached for hearing, substituting them in lieu of Hawkenson and Coo.

The complainant alleged in his bill of complaint that the three parties defendant were the Trustees of the Co-operative Society of America, with powers, duties and obligations which were set forth in a certain declaration of trust, copy of which was attached to the bill. He further alleged that in November 1920, Parker, Hawkenson and



100 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

10000 - 10000

Co., as such Trustees, employed the complainant as their agent for the purpose of purchasing a Life Insurance company, to be managed and carried on by them, as trustees, pursuant to the power granted to them in the declaration of trust, and that in consideration of the complainant's services they had promised and agreed to pay him a reasonable compensation. The complainant further alleged that he accepted the employment with the defendants and entered into the performance of the work which he was engaged to do and that in that connection he entered into certain contracts, under which he engaged to purchase the controlling interest in the stock of the Peoples Life Insurance Co. and also in the stock of the Randolph Building Corporation. He alleged further that at the request of the three defendants, as trustees, and in order to enable the complainant to make this purchase, at a price less than would have been possible otherwise, he, the complainant, had concealed the fact that the defendants were his principals and had entered into the contracts of purchase in his own name, but, in reality, for the three defendants as trustees of the Co-operative Society of America; and further, that after the complainant had entered into such contract, it was carried out and performed, in accordance with its terms, and the consideration paid for stock of the Life Insurance Company and the Building Corporation was furnished by the three defendants, as Trustees, and the stock of the two Companies, thus purchased was turned over to those trustees and accepted by them in accordance with the terms of the contract into which complainant had entered, in their behalf, with the former owners of those stocks. The complainant alleged that he had carried out and performed all things required of him in the said



[illegible]

contract of employment and that the reasonable value of his services was \$80,000. By an amendment to the bill the complainant alleged that in carrying out the terms of his employment contract and in complying with the instructions of the defendants, he found it necessary to have the assistance of a lawyer who had had experience in the law of insurance, and that in this connection the defendants directed him to employ W. F. Thornton, who was a member of the Chicago Bar, experienced in insurance matters, and that he did so employ Thornton and the latter performed certain services, at the complainant's request for and on behalf of the defendants, for which the charge of \$2,000 was made, which was a reasonable fee for the services rendered, and that the complainant was liable as the agent of the defendants for that amount and that he was entitled to be paid such amount by the defendants, in addition to such sum as the complainant himself was entitled to, for services.

The answer filed by the defendants admitted some of the facts alleged in the bill of complaint and denied others, and the issues thus formed will be referred to hereafter. The testimony submitted was heard by the chancellor in open court, after which a decree was entered, in which the chancellor found that complainant had rendered services as alleged by him in his bill of complaint, which were reasonably worth the sum of \$15,000, and that he had expended in and about his employment the sum of \$400.00, and that the reasonable value of the services rendered by W. F. Thornton, were \$2,000, and by the decree it was ordered, adjudged and decreed, that defendants, as Trustees, pay the complainant the aggregate of this sum, namely, \$17,400.

At the opening of the hearing before the chancellor,





contract of employment and that the reasonable value of his services was \$50,000. By an amendment to the bill the complainant alleged that in carrying out the terms of his employment contract and in complying with the instructions of the defendants, he found it necessary to have the assistance of a lawyer who had had experience in the law of insurance, and that in this connection the defendants directed him to employ W. F. Thornton, who was a member of the Chicago Bar, experienced in insurance matters, and that he did so employ Thornton and the latter performed certain services, at the complainant's request for and on behalf of the defendants, for which the charge of \$2,000 was made, which was a reasonable fee for the services rendered, and that the complainant was liable as the agent of the defendants for that amount and that he was entitled to be paid such amount by the defendants, in addition to such sum as the complainant himself was entitled to, for services.

The answer filed by the defendants admitted some of the facts alleged in the bill of complaint and denied others, and the issues thus formed will be referred to hereafter. The testimony submitted was heard by the chancellor in open court, after which a decree was entered, in which the chancellor found that complainant had rendered services as alleged by him in his bill of complaint, which were reasonably worth the sum of \$15,000, and that he had expended in and about his employment the sum of \$400.00, and that the reasonable value of the services rendered by W. F. Thornton, were \$2,000, and by the decree it was ordered, adjudged and decreed, that defendants, as Trustees, pay the complainant the aggregate of this sum, namely, \$17,400.

At the opening of the hearing before the chancellor,



contract of employment and that the respondent's value of his services was \$50,000. By an amendment to the bill the complainant alleged that in writing and the terms of his employment contract and in complying with the instructions of the respondent, he stated it necessary to have him acquainted with a lawyer who had had experience in the law of insurance, and that in this connection the respondent directed him to employ L. E. Thompson, who was a member of the Chicago bar, experienced in insurance matters, and that he did so employ Thompson and the latter performed certain services as the complainant's counsel in and on behalf of the respondent, for which the value of \$5,000 was asked, which was a percentage for the services rendered, and that the complainant was liable to the respondent for that amount and that he was entitled to be paid such amount by the respondent, in addition to such sum as the complainant himself was entitled to for services.

The answer filed by the respondent admitted none of the facts alleged in the bill of complaint and stated that the respondent found all its interest in insurance, the testimony submitted was based on the respondent's own words after which a hearing was ordered, in which the respondent found that complainant had rendered services as alleged by him in the bill of complaint, which were reasonably worth the sum of \$5,000, and that he had expended in and about his employment the sum of \$50,000, and that the respondent's value of the services rendered by L. E. Thompson was \$5,000, and of the sum now is now earned, expended and received, that respondent, as respondent, pay the complainant the amount of \$5,000.

some discussion took place between the court and counsel for the respective parties, on the question of whether a court of equity had jurisdiction over such a case as was presented by the allegations set up in the pleadings. From an examination of this discussion, as it appears in the record, we find that counsel for both the complainant and the defendants took the position and so stated to the court, that the case, as made out by the facts alleged in the bill of complaint, was one within the jurisdiction of a court of equity, inasmuch as the complainant was not seeking to enforce any personal liability on the part of the defendants, but was seeking to establish a decree against them as trustees, payment of which would necessarily be made from certain trust property in their hands in the capacity of trustees. It is now urged by the defendants that although the trial court may have had jurisdiction of this case, as a court of chancery, on the facts alleged in the bill, such facts were not proven and therefore the case as it stood after the proofs were in, was not within the jurisdiction of a court of equity, and for that reason the decree of the trial court should be reversed. Counsel for the defendants contend that the complainant, having alleged in his bill that the three defendants, as Trustees of the Co-operative Society of America, had engaged him to perform the services set forth in the bill, and it appearing from the declaration of the trust, a copy of which was attached to the bill, that in order to bind the trust estate by any action of the trustees, such action must be concurred in by at least two of the trustees, the bill made out a case which was within the jurisdiction of a court of equity, but that the proof shows that only one of the three trustees



some discussion has taken place between the two parties and it is  
the respective parties, on the question of whether a court  
of equity had jurisdiction over such a case as was presented  
by the allegations set up in the bill. From an examina-  
tion of this discussion, as it appears in the record, we  
find that counsel for both the complainant and the defend-  
ant took the position and so argued to the court, that the  
case, as made out by the facts alleged in the bill of com-  
plaint, was one within the jurisdiction of a court of equity,  
inasmuch as the complainant was not seeking to enforce any  
contractual liability on the part of the defendant, but was  
seeking to establish a breach against him of a trust, rep-  
resenting in which would necessarily be made from certain facts  
properly in their hands in the exercise of discretion. It is  
now argued by the defendant that although the bill does  
not give him jurisdiction at this point, as a court of equity,  
on the facts alleged in the bill, such facts were not  
shown and therefore the case as it stands falls outside  
the jurisdiction of a court of equity.  
At the first hearing the answer of the first party should be  
referred, because the defendant's answer was not  
filed. Having allowed the bill over the first hearing,  
and, in response to the counter-claiming party of interest, had  
suggested him to further the answer set forth in the bill, and  
it appearing from the discussion on the first, a copy of which  
was submitted to the bill, that in order to show the facts  
set forth by way of answer to the complaint, such answer must be sub-  
mitted in by a certain day at the first hearing. The bill made out a  
case which was within the jurisdiction of a court of equity.

made the contract of employment with the complainant and that, therefore, under the declaration of trust, the trust estate was not bound by that action of the single trustee, and inasmuch as the trust estate was not bound or involved, equity did not have jurisdiction, but the complainant's remedy was at law, against the single trustee, individually.

In our opinion, this contention becomes immaterial. For reasons to which we shall refer later, we have reached the conclusion that the trust estate is liable, even though the contract of the complainant may have been entered into by only one of the three trustees of the estate, inasmuch as the complainant performed services which resulted in the acquiring of sufficient stock of the Insurance Company and the Building Corporation by the Co-Operative Society of America, to give the Society control of those two corporations. The trust estate, through the trustees, having thus accepted the benefit of the complainant's services, was liable to pay him a reasonable compensation therefor. The proof made, in our opinion, sustains the bill and, therefore, the point made is untenable.

There is no dispute in the evidence over the fact that the defendant Parker, acting as a Trustee of the Co-Operative Society of America, engaged the complainant to acquire a controlling interest in the Insurance Company and the Building Corporation, but there is conflict in the testimony as to the terms of the employment, and as to whether the course pursued by the complainant was in accordance with those terms. Further, there is no dispute in the evidence over the fact that the complainant, in carrying out his employment, secured a contract for the purchase of sufficient stock to control





the two corporations, the Peoples Life Insurance Company and the Randolph Building Corporation, and there is practically no dispute over the further fact that after the complainant had closed the contracts of purchase for the controlling interest in these two corporations, the defendant trustees, acting for the Co-Operative Society of America, carried out the purchase of sufficient stock to control both of those corporations, and now own the controlling interest in both of them.

There is a dispute in the testimony as to whether the defendant trustees, in completing this purchase, acted with knowledge of the complainant's connection with the contracts or his alleged employment or his claim for compensation in connection with the acquiring of the contracts. The complainant's testimony was to the effect that he and Parker had several conferences concerning the subject-matter of the complainant's employment, and that Parker stated to the complainant that he wanted him to either organize or acquire a life insurance company, for the Co-Operative Society of America; that the complainant, at Parker's request, made an investigation of several companies which led ultimately to the making of a contract for the purchase of a controlling interest in the Peoples Life Insurance Company; that in the course of his investigation, the complainant found that the latter company also owned the controlling interest in a down town building in the City of Chicago; that the ownership of this building was in a separate corporation, and that a controlling interest in the latter company could also be obtained; and at Parker's direction a contract was entered into for the purchase of the controlling interest in both the Insurance Company and the





Building Corporation. He testified that in their second conference, he told Parker that he wanted to know what his (Parker's) plans were with relation to the association of the Insurance Company to the Co-Operative Society, and that Parker said that he did not want the Co-Operative Society to be known in connection with the Insurance Company at all; that he wanted the complainant to be "the whole works" in the Insurance Company. There is no controversy between the parties over the fact that all during the time these preliminary negotiations were going on between Austin and Parker, it was the understanding that when the Insurance Company was acquired Austin was to become the president of the Insurance Company. He testified further that in the conference last referred to, Parker told him that when the Insurance Company was acquired, he wanted the stock which was to be purchased in the interest of the Co-Operative Society of America, to be issued in the complainant's name and that he wanted the complainant to vote the stock and operate the company according to his best judgment, consulting with Parker from time to time; and that complainant then stated to Parker that in preparing a draft of the contract to be executed between them he would attempt to keep these ideas in mind and follow them. In one of these preliminary interviews, the complainant testified that the question of his compensation was discussed in a general way and that the complainant told Parker that he would not be justified in assuming the position of president of the Insurance Company, which was to be acquired, at a salary of less than \$25,000 a year, plus one per cent on the premium income of the business, and that Parker said he thought that was not out of the way, and he further suggested, as already stated, that the complainant "outline a basis of contract" between them.



being surprised. He recalled that in their second year  
 together, he told Father that he wanted to know what the  
 (Father's) plans were with relation to the succession of the  
 business. He was in the (negative) position, and that Father  
 said that he did not want the (negative) position to be known  
 in connection with the business. He said that he wanted  
 the complaint to be "the whole matter" in the business. He  
 there is no controversy between the parties over the fact that  
 all during the time these preliminary negotiations were going  
 on between Father and Father, it was the understanding that when  
 the business began and Father was to become the  
 partner of the business. He recalled Father's statement that  
 in the conference last evening he, Father, told the other men  
 the business. He said that he was not to be known to  
 any of the men in the interest of the business. He said  
 of course, he was known in the complaint's case and that he  
 stated the complaint to take the whole and make the company  
 something to his best judgment, something very much like  
 him to show that the complaint was going to be very much  
 in preparing a check at the moment as he wanted to know then  
 he would simply be kept down there in mind and follow them.  
 In one of these preliminary interviews, the complaint said  
 that that the question of his resignation was discussed in a  
 general way and that the complaint said Father that he would  
 not be permitted to resign the position of president of the  
 business. He said that he was in the position of a partner of  
 the business. He said that he was not to be known to the  
 men of the business, and that Father said he would not be  
 known to the men of the business, and that Father said he would not be

The complainant further testified that he told Parker he had his own attorney, who was very familiar with insurance matters and that he would want to have his services in connection with the working out of the proposition for which Parker was engaging him, and that, of course, the attorney, would not do the work for nothing, and Parker said that would be all right and asked if the attorney was reasonable, and being assured that he was, Parker told the complainant to go ahead and employ him to help complainant "do this work and get this thing going as fast as possible."

According to the complainant's testimony, he thereupon engaged Thornton and discussed with him the details of his conference with Parker and asked him to make a draft of a contract between the complainant and the trustees of the Co-Operative Society, such as would include the details as the complainant had outlined them. It appears from the complainant's testimony that he and Thornton prepared a memorandum of the various matters that were to be included in the contract and the complainant testified that in the third conference with Parker he submitted this memorandum to him. According to the copy of the memorandum, as it was introduced in evidence, it recited that complainant was to receive \$25,000 a year and 1% of the gross premium receipts; that he was to give the business of the Insurance Company such time and attention as would be necessary, but that until he had arranged the matters of the National Oxygen Co., with which he was then connected, so that they would not require his further attention, he was not to be compelled to give his entire time to the Co-Operative Society of America. This memorandum contained a further item, apparently to the effect that complainant was to have full



100

The complaint further stated that he had  
 known he had his own attorney, and was very familiar with  
 insurance matters and that he would not have his name  
 placed in connection with the building out of the proposition  
 for which he was engaged, and that, of course, the  
 attorney would not do the work for nothing, and that he  
 had would be all right and would be the attorney who would  
 take, and being assured that he was, he then told the complainant  
 and to be ahead and asked him to help complainant "to the  
 work and the thing being as fast as possible."

According to the complainant's testimony, he there-  
 upon engaged Thomas and discussed with the counsel of his  
 engagement with them and asked him to make a check of a  
 tract between the complainant and the transfer of the building  
 five times, and he would include the title to the building  
 and had nothing done. It appears from the complainant's tes-  
 timony that he and Thomas prepared a commission of the  
 time before that was to be included in the contract and  
 the complainant testified that in the first conference with  
 further he indicated his intention to him, according to the  
 copy of the agreement, as it was indicated in evidence, it  
 testified that complainant was to receive \$10,000 a year and 10  
 of the same amount testified that he was to give the same  
 was at the same time and was and received as well  
 be necessary, but that still he had arranged the matter of  
 the National Oxygen Co., with which he was then connected, as  
 that they would not receive his further attention, he was not  
 to be controlled as the building was for the improvement

charge and control of the Insurance Company, with power to employ; that all stock purchased, "except qualifying shares shall stand in the name of said Austin as trustee and be held by him, among other purposes, as collateral to the performance of this contract with the Co-Operative Society of America."

The complainant testified that at the time he handed this memorandum to Parker, he asked him to take it and go over it carefully and find out if it was in accordance with his understanding of the arrangement they had outlined at their previous conversations, and Parker put it in his pocket and said he would go over it; that they did not enter into any lengthy discussion of the terms of the contract at that time, as Parker was in a hurry. Just after this, the complainant went east to investigate the possibilities connected with several companies he had in mind, but nothing definite came of that trip and after he returned to Chicago he learned of the possibility of acquiring the controlling interest in the Peoples Life Insurance Company, and upon reporting the possibilities as to that Company to Parker, and also the possibilities of acquiring the building above referred to, Parker was very much interested in both propositions and urged the complainant to bring his negotiations, with regard to them, to a culmination. The plaintiff testified that every time he had occasion to confer with Parker in these matters, he spoke to him with regard to the proposed contract to be entered into by complainant and the trustees representing the Society, and that each time Parker stated that he had been so busy he had not had time to take it up, "But it is all right - we will get to it and sign it just as quick as we get time." His testimony further was to the effect that a second draft of the proposed contract between them was prepared, which Parker



...and control of the ...  
...all work ...  
...in the ...  
...of the ...  
...the ...

The committee believed that it was in the public interest to have a full and complete investigation of the activities of the Communist Party in the United States. It was the duty of the committee to report to the House the results of its investigation. The committee found that the Communist Party had been active in the United States for many years and had been successful in obtaining the support of many Americans. The committee also found that the Communist Party had been successful in obtaining the support of many foreign governments. The committee believed that the Communist Party was a threat to the United States and that it was necessary to take action to prevent it from becoming a more powerful force in the United States. The committee recommended that the House should pass a resolution condemning the activities of the Communist Party and that it should take steps to prevent the Communist Party from obtaining the support of Americans and foreign governments.

stated was acceptable. Apparently this draft of the contract was the one which finally led to a break between the parties. The first document which the complainant testified he furnished Parker, was in the form of a memorandum merely, but this second draft was a formal contract, reciting that the Co-Operative Society of America desired to purchase a controlling interest in, and control and operate insurance companies (apparently it was the expectation that the Society would acquire several companies engaged in different lines of insurance) and it further recited that whereas complainant had special knowledge and qualifications for the organization, purchase, and operation of such companies, therefore, the Society employed complainant as its insurance expert, for a term of five years; that the complainant was to organize or purchase interests in insurance companies, as the Society might determine, with funds furnished him by the Society; that inasmuch as it would be necessary to subscribe for stock, complainant was to purchase and acquire such stock, in his name, except as to such qualifying shares as might be needed to qualify directors; that the stock was to stand in complainant's name, but was to be held by him, among other purposes, as collateral for the performance of this contract between him and the Society; and that complainant at any time, upon request, was to execute a proper declaration of trust or other document, showing the interest of the Society in the stock, but the stock was to stand in the name of the complainant individually and not as trustee; that complainant was to have complete charge and control of all organization of insurance companies, purchase of insurance companies or stock in such companies, and of their operation during the term of the contract; that he was to have full power and authority





to vote the stock as he saw fit, in the exercise of his discretion, and full power to determine the policy and course of business of the insurance companies, and full authority to employ or discharge employees and determine their compensation and full authority to determine the form and substance of all contracts necessary or convenient in the discharge of his duties and in the operation of the Companies, "but all organization of insurance companies or purchases of interest in insurance companies, and of purchases of stock in insurance companies shall be first especially authorized in each instance by such Society." This draft of contract further provided that the Society agreed to pay complainant a salary of \$35,000 a year, payable semi-monthly, and 1% of gross premium receipts, payable semi-annually. It also provided that complainant would not be expected to give his entire time and attention to the performance of his duties under the contract, until he had so arranged the matters of the National Oxygen Co. that they would not require his time. The complainant testified that this draft of contract was prepared by Mr. Thornton and it would seem from his testimony that at the time he submitted it to Parker they went over it in a general way and the only thing Parker commented on was the provision calling for 1% on the gross premium receipts of the companies, and complainant explained that provision of the contract. Then the parties separated, on the occasion of the conference at which this draft of contract was submitted, complainant testified that Parker took it away with him, and that he spoke to him about it a number of times after that; that on one occasion Parker stated that he had mislaid it and complainant caused another copy to be prepared, which he gave to Parker later. This last draft of the contract was apparently given to





Parker early in January 1921. The complainant testified that in various conferences with Parker, the latter made it plain that complainant was to take the title to the stock of any insurance companies that were to be acquired and the stock was to be issued in complainant's name and voted by him as he saw fit, and that it was understood by Parker that complainant was to have full power and authority to determine the policy and course of the insurance business which was to be engaged in by the Co-Operative Society, through such insurance companies as it might acquire; that Parker said, in this connection, "I want to build this thing up around you and don't want the Co-Operative Society to have anything to do with it or be known in connection with it in any manner, shape or form."

When the deal with the Peoples Life Insurance Company was pending, complainant suggested to Parker that no agreement to purchase be entered into until they had the Company examined by an actuary and received a favorable report on it, and this was done. The complainant testified that pursuant to the directions which Parker had given him, he did not disclose to the parties with whom he was negotiating, one Nelson and one May, who owned or controlled a majority of the stock in the Peoples Life Insurance Company and the Randolph Building Corporation, in whose interest he was acting, but just before the deal was closed they discovered, through some other source, who the complainant was acting for and they asked him whether or not their information was correct and he said it was. When this contract for the purchase of the controlling interest in these two Companies was closed, it was entered into by the complainant in his own name. The complainant testified that Parker had



Further early in January 1901. The correspondence regarding this in  
 various correspondence with Mr. Foster, the latter made it plain that  
 explanation was to take the title to the stock of the  
 same companies that was to be registered and the stock was to  
 be issued in accordance with and voted by him as he saw fit,  
 and that it was authorized by Mr. Foster that explanation was to  
 have full power and authority to determine the policy and  
 course of the corporation and that was to be registered in  
 by the Corporation. Mr. Foster said, in this connection,  
 as it might appear that Mr. Foster said, in this connection,  
 "I want to build this thing up around you and don't want the  
 Corporation to have anything to do with it as it  
 does in connection with it in any way, shape or form."

When the 1st of the January 1901 the following was  
 prepared, written, and signed by Mr. Foster and in  
 copy to be sent to the various banks and the  
 various by an attorney and received a receipt for it,  
 and also the same. The explanation stated that payment to  
 the directors which having been given him, he did not discuss to  
 the matter with whom he was negotiating, and Foster and the  
 copy was sent on condition a majority of the stock in the  
 various life insurance company and the various holding company  
 alike, in other interests he was making, but just before the  
 was closed they discovered, through some other source, that the  
 explanation was signed by him and that the matter was not  
 truly satisfactory and current and as such it was. That this  
 statement for the purpose of the controlling interest in these  
 was explained was signed, it was stated that by the explanation

directed him not to disclose who his principals were, and had given him two reasons for that request, saying that if the sellers knew who the purchaser really was, it might cause them to run up the price; and also, because it might precipitate litigation. Complainant testified that the latter was Parker's principal reason, his explanation being that they "were being attacked very frequently and that he desired to have some substantial business or enterprise that would not be subject to attack, and in the event that an attack was prosecuted against the Co-Operative Society successfully, that they would have some property that would be immune from the results of such an attack."

According to the testimony of complainant, at about this stage of the proceedings, he had occasion to consult Parker at the general offices of the Co-Operative Society of America, and while he was there Parker introduced him to Hawkenson, saying, "Mr. Austin is the man who is handling this insurance deal for us," whereupon, Hawkenson remarked, "Well, how are you getting along?" to which complainant answered, "Fine;" that upon this occasion another gentleman was standing a few feet away from Mr. Hawkenson, and Mr. Parker introduced complainant to him, "as Mr. Cow, another trustee."

The contract for the purchase of the controlling interest in the Peoples Life Insurance Company and the Randolph Building Corporation, entered into in the name of the complainant, with Nelson and Hoy, was consummated in January 1921. The complainant testified that he had a talk with Parker on January 8, of that year, again calling attention to the fact that the contract between the complainant and the Co-Operative Society





was still unexecuted, because Parker had been busy and unable to get around to it, and complainant suggested that they get it settled, and Parker agreed and suggested that they go over to Mr. Thornton's office for that purpose. Complainant testified that they did go to Mr. Thornton's office and <sup>the</sup> contract was there produced and its terms discussed. It seems that there was another corporation, which was either a subsidiary of the Co-Operative Society or its fiscal agent, for complainant testified that Parker explained that this other corporation, which was known as the Great Western Securities Company, was the one from which the Co-Operative Society got all their money; and that the Securities Company had negotiated all the stock or memberships of the Co-Operative Society, and that at this conference in Thornton's office, over the matter of the terms of the contract between complainant and the Co-Operative Society, complainant testified that Parker stated that in his opinion the contract should not be between the complainant and the Co-Operative Society, but rather between the complainant and the Great Western Securities Company; that the contract would be more satisfactory in that form; whereupon, complainant and his counsel stated that they saw no objection to that, and apparently the draft of contract was changed accordingly. Thereupon, complainant testified, Parker said that he would arrange a conference with his lawyer, who was Mr. Harrie F. Williams, at the office of the latter at half past two on the following Sunday afternoon, where they could then sign the contract; and complainant and his lawyer agreed to be at the office of Mr. Williams at the time appointed. Complainant testified that they kept that appointment, meeting Parker there, as well as his lawyer, Mr. Williams; that nothing was said for



was still unexplained, because neither had been long and visible  
to the mind of it, and a conclusion suggested that they had  
in reality, and finally arrived at a conclusion that they had  
to Mr. Thompson's office for that purpose. Thompson had  
advised that they did go to Mr. Thompson's office and Thompson  
was there present and the same day. It seems that  
there was another opportunity, which was either a possibility  
of the Co-operative Society or the fiscal agent, the possibility  
and realized that there was a possibility that this other company  
also, which was known as the Great Western Petroleum Company,  
was the one from which the Co-operative Society got its gas  
supply and that the Committee Group had explained all the  
about an investigation of the Co-operative Society, and that it  
was mentioned in Thompson's office, even the matter of the  
form of the contract between companies and the Co-operative  
Society, companies testified that there was a contract in the  
opinion the contract should not be before the committee and  
the Co-operative Society, but rather between the companies  
and the Great Western Petroleum Company, that the committee  
would be very satisfactory in that they themselves, companies  
and that his counsel stated that they were no objection to that  
and especially the fact of payment was changed accordingly.  
Thompson, companies testified, Parker said that he would  
arrange a conference with his lawyer, Mr. Mr. Mr. Mr. Mr.  
William, at the office of the latter at which time he was  
following Sunday afternoon, that the same was with the same  
Parker and Thompson and his lawyer agreed to go to the office  
of Mr. William at the time specified. Thompson had

a few moments after they arrived at Williams' office; that finally Parker got up from his chair and said, "I am not going through with this contract. Mr. Austin has shown that he has no confidence in the Co-Operative Society of America, and I refuse to go through with it." The complainant further testified, in rebuttal, with respect to this occasion, that when they were all present in Williams' office, the contract which complainant had entered into with Nelson and Hoy, was produced by Parker; that the complainant had handed this contract to Williams several days beforethat, for delivery to Parker; and that he had discussed the details of this contract with both Parker and Williams, prior to the Sunday conference referred to, and that at that conference Thornton was present, and that when they had thus discussed the contract, Williams had stated that as far as he could see, it was satisfactory. Complainant further testified, with reference to the Sunday conference in Williams' office, that the only reason Parker gave for refusing to proceed with the contract was that complainant had shown that he had no confidence in the Co-Operative Society of America, nor in him, Parker; that Parker said nothing to indicate in what way complainant had shown such lack of confidence; that when Parker made the announcement already quoted, complainant asked him what the objection was, and Parker replied, "Well, you don't show any confidence in the ability of the Co-Operative Society to perform things, and you show no confidence in me;" that the complainant then said, "Well, what would you suggest? Can you suggest any remedy for this lack of confidence? Is it the contract that you object to? If so, what changes do you propose in the contract? There should



A few moments after they arrived at Williams' sitting room  
 directly before her on his chair and said, "I am not  
 coming through with this matter." Mr. Brown has been told  
 he has no objection in the Department Society of London.  
 and I refuse to go through with it." The committee then  
 separated in protest, with Brown in this position, and  
 when they were all present in Williams' office, the committee  
 which Williams had entered into with Brown and Mr. Brown  
 returned by saying that the committee had voted this was  
 true as Williams stated and believed, for delivery in  
 London; and that he had discussed the details of this matter  
 with both Brown and Williams, and the Society's committee  
 refused to, and that at that conference Brown was present,  
 and that when they had then discussed the matter, Williams  
 had stated that as far as he could see, it was satisfactory.  
 Committee further stated, with reference to the Society  
 committee in Williams' office, that they would never  
 have the meeting to proceed with the business and that the  
 plan was that when they had no objection in the Depart-  
 ment Society of London, was in that position, and Brown was  
 invited to London in that way, Williams had stated that they  
 of committee that when Brown was the representative of  
 matter, committee asked him what the suggestion was, and  
 Brown replied, "Well, you state that you will be in the  
 office of the Department Society in London, and you  
 have no objection in my" that the committee then said,  
 "Well, what would you suggest? Can you suggest any more? Is  
 this kind of objection? Is it the suggestion that you object to?"

not be any difficulty in us getting together now after we have gone so far. If you have any objections, this is the place and the time to remedy them." Complainant further testified that Parker made no reply to these remarks, but he said to Mr. Williams, before going out of the office, "However, this deal is all right. It is a good one, and it is entirely satisfactory to us, and I want you, Mr. Williams, to arrange with Mr. Austin and Mr. Thornton; Mr. Austin is entitled to a very liberal compensation and Mr. Thornton is entitled to compensation for what they have done." On cross-examination, the plaintiff testified with regard to this incident, that before going out of the office, Parker directed his lawyer to ascertain from complainant and Thornton "the compensation they desire, as this deal is a good one for us and they should be well compensated."

As already stated, it is not denied that the contract which the complainant had entered into with Nelson and Hoy, for the purchase of the controlling interest in the Peoples Life Insurance Company and the Randolph Building Corporation, was, in substance, carried out by the trustees of the Co-Operative Society of America, the latter thus acquiring sufficient stock in these two Companies to control them, and they were still owned by the Co-Operative Society at the time of the trial of this case; and it is not denied that the transaction was a profitable one for the Society. It appears further, from the testimony of the complainant, that under date of January 13, 1931, the latter sent a letter to Parker stating that he understood the purchase of the stock in the two companies referred to was to be closed the following day and he stated that he



and the only difference is in getting together now when  
we have time to do. It is not very objectionable, this is  
the place and feeling to remedy them. The objection that  
is raised that the same is not very good, but it is  
said to be different, being only not in the office, "I am  
sorry, this is not in all right. It is a good one, and it is  
entirely satisfactory to me, and I want you, Mr. Allison,  
to arrange with Mr. Martin and Mr. Thompson, Mr. Martin  
is called to a very liberal communication and Mr. Thompson  
is called to communication for what they have done," he  
understands, the society is called with regard to this  
incident, that before going out of the office, there should  
be a paper to examine the committee and Thompson, the com-  
mittee may desire, as this has been the case for some  
time, they would be well organized."

It is already stated, it is not denied that the committee  
that the committee has arrived with the letters and they have  
the members of the committee to the committee, and  
the committee and the committee, and the committee, and  
in substance, called out by the members of the committee  
society of the committee, the latter then meeting with the  
in these two chapters to control them and they were well  
named by the committee society at the time of the trial of  
this case and it is not denied that the committee was a  
committee and the committee, it is not denied, from the  
report of the committee, that every date of January 11,  
1901, the latter was a letter to the committee and it is not

was ready to render Parker any assistance he could in closing the contract. On the following day, complainant wrote a letter to Mr. Williams, attorney for Parker, stating that he had addressed letters to Nelson and Hoy, advising them that Williams represented his (complainant's) principals in the purchase of the stock of the two corporations referred to, and that Williams had in his possession the funds for the purpose of closing the transaction for that principal, and he requested them in this communication to let Williams have any information he desired. Evidence was introduced concerning the reasonable value of the complainant's services in negotiating these contracts. It was complainant's theory that whereas his original understanding with Parker had been that he was to become the president of the Peoples Life Insurance Company, on the salary stipulated, Parker, having seen fit to abandon that arrangement, as he did at the time of the conference in Williams' office on Sunday, January 9, and having expressly stated at that time that complainant as well as Thornton was entitled to be paid for the services they had rendered, he was entitled to recover from the Society, which, through its trustees, had acquired the controlling interest in the two companies referred to, through and by means of the contract which the complainant had negotiated, a reasonable compensation for his services.

The complainant had been brought into touch with Parker through one Craig, who testified that he was "in the employment brokerage business, placing high grade men;" that Parker had come to him, representing to him that he wanted to organize an insurance company and was interested in getting a man to "head it up," and he wanted a man big enough to be the





president of the company and one who understood insurance. As a result of this, Craig interested the complainant and introduced him to Parker. It is apparent from the testimony in the record that the complainant was a man of long experience in the insurance business and one entirely familiar with it. He had occupied different official positions with insurance companies and for some time had been president of the Old Colony Life Insurance Company. It further appears from the record that Parker and his associates were in no way familiar with the insurance business.

Mr. Thornton testified as a witness for the complainant and in corroboration of the testimony of the latter. Among other things, he testified that on Saturday afternoon, the day prior to the Sunday conference in Williams' office, Parker and the complainant were in the office of the witness in connection with the employment contract, between the complainant and the Co-Operative Society, and that they all went over the contract together, and some changes were made in it pursuant to suggestions made by Parker, and finally Parker said it was satisfactory to him. This witness testified that he remarked to Parker at this time that "It was a pretty drastic contract," and that Parker replied that it was all right - "he wanted to put the responsibility on Mr. Austin." This witness testified to the change made in the contract at this time at Parker's suggestion, making it a contract with the Great Western Securities Company rather than the Co-Operative Society of America. This witness then testified substantially as the complainant had, with reference to the Sunday conference at the office of Mr. Williams. He testified that he told Mr. Williams, after Parker had left the office, that he expected





\$2,000 in payment of the services he had rendered in the matter.

The defendant Parker testified concerning the several conferences he had with the complainant, and admitted that he had arranged with the complainant for his services in acquiring a life insurance company, to begin with, with the expectation that they would go into other lines of insurance later, and that it had been understood that after the controlling interest in the Life Insurance Company had been acquired, the complainant, Austin, was to become the president of the company, on a salary of \$25,000 a year and 1% of the gross premium income of the Company. He denied, however, that he had ever received the original memorandum of the employment contract from complainant, between him and the Co-Operative Society, to which the complainant had referred in his testimony, but that the first draft of this contract which had come into his hands was the one on which he had based the action which he took at the Sunday conference in Williams' office, when he said he would have nothing further to do with the complainant.

Parker admitted that he had told the complainant that the Co-Operative Society must not be known in connection with the purchase of the Life Insurance Company, for which they were negotiating, but he testified with regard to that subject, that he told the complainant to be careful about that contract, and he told him that he must not enter into any contract until after their lawyer (Williams) had passed on it, and further, that "The contract must not be made in your name because if it is I will be accused some day of taking a commission from you. I have got to buy directly because I am representing a trust estate and I cannot afford to have anybody say that I have participated directly or indirectly in the purchase of any of





these properties." Parker further testified that late one Friday afternoon, complainant came and told him he had Nelson and Hoy at the point of making a contract and Parker requested him to meet him the following morning at Williams' office, where the latter would write the contract; that they met the following morning at Williams' office and he told Mr. Williams he wanted him to make a contract between the Peoples Life Insurance Company, or Hoy and Nelson, and the trust estate. At this point in the testimony of Parker, as it appears in the record, the witness apparently breaks into the subject of the employment contract with the complainant and he testifies that Williams asked Parker what his agreement was with Austin, whereupon Parker turned to Austin and said that Williams was very busy and he suggested that he go to his attorney and have him draft the employment contract; that he asked Austin who his lawyer was and Austin gave him Thornton's address, and he met Austin the following morning at Thornton's office, and at that time, they presented to him (Parker) a contract covering Austin's services, and that this contract was not in accordance with the terms he had made with Austin, and he told him that no trustee would dare to sign such a contract, and that he then suggested that "Perhaps the Great Western might enter into that contract, with modifications," and he (Parker) said he would come back and meet Austin and Thornton at the latter's office at four o'clock that afternoon. He further testified that he returned to the office at the time appointed, when the complainant presented him with the same draft of contract, whereupon, Parker remarked that the changes had not been made, and he said that he would meet Thornton and the complainant at the office of his attorney (Williams) on the following afternoon;



These provisions, "Various further facilities were also  
being afforded, including some and also the fact of being  
and up to the point of making a contract and further provisions  
him to meet him the following morning at William's office.  
When the latter went with the company, then they met the  
following morning at William's office and he said the William  
he wanted him to make a contract between the parties late  
Tuesday morning, at 10:00 and 11:00, and the same night.  
At this point in the testimony of Henry, as he appears in the  
record, the witness apparently begins to be subject to the  
employment contract with the company and he testifies that  
William asked Henry what his agreement was with the latter, where  
upon Henry stated to William and said that William was very  
very and he suggested that he go to his attorney and have  
him draft the employment contract; that he asked William the  
the latter was not willing to have the company's attorney, and he  
was within the following morning at William's office, and at  
that time, they presented to him (Henry) a written contract  
inserted a provision, and that this contract was not in accordance  
with the terms he had made with Henry, and he told him that  
he would not have to sign such a contract, and that he then  
suggested that "Perhaps the next morning night after that  
contract, with modifications," and he (Henry) said he would  
come back and meet William and discuss it the following morning  
at four o'clock that afternoon. He further testified that he  
returned to the office at the time specified, when the company  
and presented him with the same draft of contract, which  
Henry pointed out the changes and was very much, and he

which was Sunday.

Parker then gave his version of what occurred at the Sunday conference at the office of Williams, which did not vary substantially from that given by the complainant. He testified he remarked that Austin had no confidence in the Co-Operative Society of America, and that he said to Austin, "I don't care to do business with a man who will write a contract like you have written," whereupon, Thornton stated that he had drafted the contract and that if it was not satisfactory, it might be changed, whereupon, Parker stated that he considered the complainant responsible for the contract; and that this ended the interview. On cross-examination Parker testified with reference to this conference, that as he walked out of the office of Williams, he stated to Williams that he would not touch the deal with Austin in it; that he said to Williams, "The deal is a good deal," \* \* \* Mr. Austin has spent some money on this deal, he has worked from Friday - from Tuesday till Friday. \* \* \* he is entitled to some money," and he further testified that Williams asked him how much Austin was entitled to, whereupon, he (Parker) replied, "I think if you give him \$5,000 you will have paid him well." At this point in his cross-examination Parker testified, "I don't owe him a penny. I thought that he was entitled to that if he wanted to go ahead as a broker."

Parker further testified that he never said anything to the other trustees about paying the complainant \$5,000 and that the subject of complainant's contract with the Co-Operative Society was never "brought up, considered, voted upon or discussed at a meeting of the trustees of the Co-Operative Society of America." In connection with his cross-examination, Parker



John W. Gandy.

They have had his picture it was removed at the  
house removed at the office of William, with all the  
materially from that house by the removal. He  
be removed that house had no material in the  
house at house, and that he said he had  
to the house with a new set of  
from house, however, house stated that he had  
the material and that it was not satisfactory, it  
be house, however, house stated that he  
materially responsible for the material; and that  
the material. He stated that he had  
material to this material, that he had  
at William, he stated to William that he had  
that with house in it; that he said to William, "I  
a good deal," "Mr. William has money, some money  
he has asked from house - from house all  
he is entitled to some money," and he further stated that  
William asked him how much house had asked for, however,  
he (house) replied, "I don't know how much you will  
have paid him well." At this point he his  
father stated, "I don't know how much I thought that  
he was entitled to that it he would be as much as a house.  
house further stated that he was well  
to the other house about paying the material  
that the subject of material's house with the  
house was never brought up, however, house

testified that during the period in question, he and Hawkenson and Coe were the three trustees of the Society; that there were no officers and that they never kept any records nor any minutes of their meetings, nor records of any kind. He further testified that there was never a meeting of the trustees, "accepting or ratifying or authorizing negotiations with Mr. Austin. We never at any time made a contract with Mr. Austin." He further testified that the trustees finally made a contract with Nelson and Hoy, purchasing the controlling interest in the Peoples Life Insurance Company and the Randolph Building Corporation, on the same basis as was contained in the contract which Austin made with these parties; that there were some slight modifications in the details of the deal, which were not material; that the purchase price paid by them was the same price called for in the contract Austin had entered into; that after he (Parker) had broken off negotiations with Austin, and the latter had made it known that he did not wish to carry out his contract with Nelson and Hoy, the latter "opened up negotiations with us," and "the Co-Operative made practically the same deal, practically the same terms, but a new contract;" that this contract between the Co-Operative and Nelson and Hoy was closed ten days or two weeks after Austin had been eliminated.

On cross-examination Parker testified that he never employed Austin and that neither he nor the Co-Operative Society of America owed him anything; that Austin had rendered the services he had so as to "get himself a position as president of the Peoples Life Insurance Company," and that everything was going along smoothly until Austin submitted his employment contract, when he (Parker) saw that "Mr. Austin was not the kind of



testified that during the period in question, he and his  
and the very same friends of the Society; that there  
were no efforts to get any more help for the  
minutes of their meetings, nor records of any kind. In fact,  
that testified that there was never a meeting of the Society,  
"meeting or gathering of any kind or any description of any kind."  
He never at any time was connected with the Society.  
He further testified that the friends finally made a mistake  
with him and that, mentioning the committee members in the  
Society Life Insurance Company and the Society Building  
Company, he was asked to be involved in the same  
which would mean with them that they were some  
of the committee in the building of the hall, which was  
not correct; that the committee was said to be the  
same as the one in the building of the hall and that  
that after the Society was formed it was organized with  
and the latter had made it known that he did not wish to have  
and his contact with him and that the latter "spoke up  
separately with me," and "the Committee was practically  
the same body, practically the same body, but it was not."  
that this connection between the Committee and the  
was closed the type of the same after he had been  
and.

On cross-examination he testified that he never  
played cards and that neither he nor the Committee  
of cards and his wife, that neither he nor the  
there he had as he "was almost a position as president of  
the People's Life Insurance Company," and that everything was

a man to trust in a business deal." He further testified, giving as the reason why he did not break off his relations with Austin when they were conferring together at Thornton's office about the employment contract between Austin and the Co-Operative Society, on Saturday afternoon, just previous to the Sunday conference in Williams' office, that "I wanted to be sure that my blow-up with Mr. Austin was final and fixed. I wanted a third person there and a responsible man. I wanted to get my relations with Mr. Austin severed effectively was the reason I wanted to discuss it with him in Williams' office. I wanted to finish it right then and there and I wanted to be sure that my lawyer was present to be sure that I did it. I intended that at the time I was at Thornton's office." Parker further testified that he never introduced Austin to Hawkenson and Coe, as the complainant had testified.

He further testified that he expected to go through with the purchase of the Life Insurance Company and the Building Corporation as arranged by complainant, until he was presented with the contract of employment between the complainant and the Co-Operative Society and that when that was delivered to him he was "the most stunned" <sup>and</sup> "disappointed man in Chicago;" that he thought Austin would make a good man until he got that contract; that at the time he was talking over the employment contract with the complainant and Thornton on Saturday afternoon, he did not know the complainant had entered into a contract, in his own name, with Nelson and Hoy; that he found that out afterwards, "and I was stunned when I found out he had taken the contract in his own name, because I told him I cared





not handle the deal that way, because I might be accused of taking money. On cross-examination Parker testified that it would have been worth a quarter of a million dollars to the trust estate to have had Austin go through with the deal and to have had him as president of their Life Insurance Company; that the standing that would have given them would have been worth a quarter of a million dollars, and that he wanted to have Austin in that position "until he presented that absolutely rotten contract;" that Austin signed his own name to the purchase contract, and "with that in his possession he thought he could force me to sign that contract" (the employment contract); that having thus entered into the purchase contract in his own name, "He tried to force me to sign this employment contract giving him \$290,000.00 (the consideration which was called for in the purchase contract executed by Austin, and the consideration which was afterward actually paid by the Co-Operative Society for the controlling interest in the Insurance Company and the Building Corporation).

Nelson testified concerning the contract he and Hoy had made with Austin, to sell the controlling interest in the Life Insurance Company and the Building Corporation, and he said in this connection that Austin made it clear that he was not contracting for himself but was trading for someone else - "he represented that he had some principal whose name he would not divulge." He testified further that after the making of this contract, Austin instructed them to go to Williams' office, and Nelson and Hoy asked Austin for a letter stating that they were at liberty to go to Williams, who represented the principal for whom he (Austin) had been acting, and to open up negotiations with them direct. He testified further that Parker was



not include the fact that, however I might be required to  
bring money. On other-conditions (which included that  
it would have been with a number of a million dollars to  
the bank to have had been in the bank when the bank  
and to have had his in payment of his life insurance  
Company; that the standing that would have given them was in  
have been with a number of a million dollars; and that he  
wanted to have been in the bank "until he was  
that absolutely nothing happened" that would have given him  
more to the bank's account, and "with that in his pocket"  
he would have been in the bank to the bank's account. (The  
employment contract) that having been given him the bank  
there would be in his own name. "He tried to turn in to the  
this company's account giving him \$100,000.00 (the bank's  
often when he called for in the bank's account, and  
by bank, and the bank's account was always ready  
bank of the Co-operative Society for the bank's account  
in the bank's account and the bank's account).

When he called for the account he was told  
that with bank, he was the bank's account in the  
this bank's account and the bank's account, and he  
said in his account that bank was in place that he was  
and wanting for himself but was wanting the bank's account  
"The government that he had some personal when he was  
was strong," he wanted bank's account that after the matter of  
this matter, bank's account when he was in bank's account, and  
and bank and bank bank for a letter saying that they  
were as strong as he was, and bank's account and bank's account  
the bank (bank) was bank, and he was bank's account

at Williams' office at the time he went there, and that shortly thereafter the deal was closed, and no different terms were ever made than those set forth in the contract Austin had entered into with them.

Coe testified that he was one of the trustees of the Co-Operative Society of America in 1921, and further, that he never had met Austin nor been introduced to him in any way. He also testified that he never discussed with his associates, Hawkenson and Parker, the purchase of a life insurance building with particular reference to the People's Life Insurance Building, in which the Randolph Building Corporation or the People's Life Insurance Company were interested. On cross-examination, he testified that the first knew about the purchase of the Life Insurance Company sometime in January, but he could not tell what time in that month; that he first learned about it through Parker, and that they thought it would be a good thing. He then testified that in a general way he and Hawkenson and Parker "talked of the purchase of that building and the Life Insurance Company;" that he did not recall whether Parker showed him the contract, and he would not be certain whether or not he read it; that he asked Parker if the Company was all right and he said it was; that he did not recall whether he asked Parker what it was proposed to pay for the Company; that the deal was discussed by Parker and Hawkenson and himself in the offices of the Co-Operative Society, and that on this occasion "they discussed in a general way the purchase of these two concerns - that is the Building and the Life Insurance Company," and "We all agreed with Mr. Parker, - Mr. Hawkenson and myself, that we should" purchase the





companies; that he did not recall the figures involved in the deal.

Mr. Williams testified that sometime in December 1930, Parker mentioned Austin to him, and that during the first part of January 1931, he discussed the transaction involved in this case, with both Austin and Parker, and that on one occasion, apparently on Saturday, January 3, Austin came to his office saying he wanted to talk with him confidentially, and further, that he had a very lucrative position and was receiving a big salary and he wanted to know from Williams whether or not, if he went into this insurance deal, the stock which might be acquired could be put up as collateral so as to secure him in his salary. Williams then testified as to the conference which took place in his office the following day, Sunday, January 3, and he stated that on that occasion Parker came in first, bringing the reemployment contract which was to be entered into between Austin and the Co-Operative Society, and Williams read it over and made some pencil marks on it and discussed it with Parker; that later on Austin and Thornton came in and Parker told Austin that he did not like the proposed contract. He then testified to the further remarks that were made at that time, as herein before referred to, and he said that Parker stated that while he would not go ahead with the deal, and would not make any contract with Austin, that the latter had spent some time on the matter, and that whether he was legally obligated to him or not, he would be willing to pay him something for the time he had spent. He also testified to the fact that Thornton mentioned the claim he had for services, and Parker said he would not object





to them either. Williams further testified that Thornton stated that he ought to have \$3,000 for what he had done, and that Austin stated that he thought he was entitled to \$15,000 for his services. In this connection, Austin testified in rebuttal, to the effect that he made no mention of \$15,00 at the conference in Williams' office, except to say that his services in bringing about the purchase of the building alone would be worth not less than \$15,000, and that the Life Insurance Company deal was worth a great deal more.

In support of their appeal the defendants contend that there are several reasons why Austin is not entitled to receive anything from them. One of the reasons urged by them is that Austin rendered his services, in negotiating with Nelson and Key, upon the basis of a consideration to him in the form of a salary and commission on premiums, as president of the Insurance Company, and that during the negotiations he submitted an employment contract in which he included certain "conditions," which were not a part of the agreement or understanding he had entered into with Parker; and it is the defendants' contention that by injecting into the proposed employment agreement these new conditions, he forfeited his rights to any compensation, and that Parker was justified in refusing to deal with him further. In connection with this argument, the defendants point out that in rendering the decision in the trial court, the chancellor found that Parker was justified in rejecting the contract prepared by Austin. In our opinion, this contention is untenable for two reasons. In the first place, the question of whether or not the so-called "conditions" included



At that point, William Joseph Foster testified that he stated that he paid \$2,000 for the car and that he and his family stated that he was not going to pay \$10,000 for the car. In his statement, Foster testified that in 1934, he did not have any money and that he was not going to pay \$10,000 for the car. He stated that he was not going to pay \$10,000 for the car and that he was not going to pay \$10,000 for the car. He stated that he was not going to pay \$10,000 for the car and that he was not going to pay \$10,000 for the car.

In support of this, the following was stated that there are several reasons why Foster is not going to pay anything for the car. One of the reasons stated by him is that he is not going to pay anything for the car. He stated that he is not going to pay anything for the car and that he is not going to pay anything for the car. He stated that he is not going to pay anything for the car and that he is not going to pay anything for the car.

For the purposes of this statement, Foster testified that he is not going to pay anything for the car. He stated that he is not going to pay anything for the car and that he is not going to pay anything for the car. He stated that he is not going to pay anything for the car and that he is not going to pay anything for the car. He stated that he is not going to pay anything for the car and that he is not going to pay anything for the car.

by Austin in the draft of the employment contract, which he submitted to Parker, were a part of the original understanding entered into between those two men, in the subject of directly conflicting testimony; Austin testifying to the effect that they were, and Parker testifying to the effect that they were not. Such corroborating facts as are to be found in the record, in our opinion, support the contention of the complainant. The testimony of Craig, as to what Parker told him on the subject of what kind of a man he wanted him to find to handle this insurance business, as well as the admitted fact that Austin was a man of long experience in the insurance business, and Parker and his associates knew nothing about the business, tends to support the position of the complainant to the effect that Parker wanted him to have full management and control of the business, conferring from time to time with Parker. Furthermore, the reason which Austin testifies Parker gave him for having the stock appear in Austin's name, is a logical one. In this connection it is important to note that the draft of the employment contract submitted by Austin, contained a provision to the effect that at any time, on request of the trustees of the Co-Operative Society, he would execute a proper document showing that the stock in his name was, in fact, the property of the Co-Operative Society, and held by him in trust for it. Another reason for our conclusion on this point is, that the testimony does not show that Austin laid down these so-called "conditions" in the draft of <sup>the</sup> employment contract, as essential to its consummation, although it is his position that the contract was drawn in compliance with their prior understanding. The record shows with <sup>out</sup> contradiction that at the Sunday conference in



by himself in the draft of the employment contract, which he  
submitted to Turner, was a part of the original contract  
standing entered into between them two men, in the original  
of directly conflicting testimony, which testifies to the  
effect that they were, and Turner testifies to the effect that  
they were not. Each conversation there as to be found  
in the record, in the original, between the witnesses at  
Chattanooga. The testimony of each, as to what Turner  
told him on the subject of what time he was to return for  
to find to himself this insurance business, as well as the  
advised that that Turner was a man of long experience in the  
insurance business, and Turner and his associates knew nothing  
about the business, hence to support the position of the man  
evident to the effect that Turner wanted him to have full  
management and control of the business, considering from time  
to time with Turner. Furthermore, the reason which Turner  
testifies Turner gave him for having the other agent in  
Turner's name, is a logical one. If this connection is in  
reference to what that the draft of the employment contract  
submitted by Turner, contained a provision in the effect  
that at any time, on request of the president of the Insur-  
ance Company, he could exercise a proper business standing  
that the time in his name was, in fact, the property of the  
Insurance Company, and held by him in trust for it. Turner  
wishes for our consideration of this point is, that the testimony  
that was given by Turner in the original contract, and  
in the draft of employment contract, as submitted to the  
company, although it is his position that the contract was  
given in compliance with their requirements. The re-

Williams' office, when Parker stated that he would have nothing more to do with the deal, and made it plain that he was basing his action on this draft of the employment contract which Austin had submitted, the latter asked whether or not any of its provisions were objectionable and stated that if there were any differences on that point, they could doubtless be ironed out, and they ought not to have any trouble getting together. In our opinion, if Parker wanted to get rid of Austin and eliminate him from the transactions they had been negotiating, after Austin had brought the deal within reach, and thus get the advantage of the consummation of the deal, without carrying along the obligations which had been entered into, so far as Austin was concerned, he would have pursued just about the course he did.

It is the further contention of the defendants that Austin was not entitled to recover anything for his services because he violated his instructions, in entering into a contract with Nelson and Hoy, for the purchase of the controlling interest in the two corporations involved, individually. This point also is the subject of directly conflicting testimony, Austin testifying that his course in this regard was in full compliance with his instructions, and Parker testifying to the contrary. We would not be inclined to hold that a finding to the effect that, in entering into the contract in his own name, Austin did not violate his instructions, was a holding unwarranted by the evidence, but we do not regard that question as material, because it is admitted that after Austin was eliminated, the trustees of the Co-Operative Society of America went ahead and completed the contract for the purchase of the two corporations involved, or a controlling interest in them, on practic-





ally the same terms as had been negotiated in the Austin contract. The defendants, as trustees, therefore received the full benefit of Austin's services. That those services were valuable admits of no doubt.

The defendants make the further point that they should not be held liable, by reason of the fact that they subsequently consummated the contract, because they had a right to consider that they could go ahead and deal with Nelson and Hoy, without any claim on the part of Austin and that in any event, an agent may not claim compensation on the theory that his principal has accepted the benefit of the agent's services, unless it may be shown that such action of the principal was with knowledge of the agent's claim. In this connection, the defendants contend that it is clear and undisputed that Parker was the only trustee who knew what services Austin had rendered, and further, that there is not the slightest evidence in the record that either Coe or Hawken-son had any knowledge, or were in any way charged with knowl- edge, of Austin's claim. In our opinion, these contentions are not borne out by the record. Austin testified that he did meet both Hawkenson and Coe and that when he met the former, Parker who introduced them, said that Austin was the man who was "handling this insurance deal for us," and that Hawkenson asked how he was getting on. Parker and Coe denied that any such thing took place. The testimony of Coe, in this connec- tion, is so contradictory as to make it very unconvincing. It seems to us to be entirely clear, from his cross-examina- tion, that he and Hawkenson and Parker discussed this whole proposition, and that they did this before the transaction was



While the above forms are not being requested in the same manner as the above, the following are requested in the same manner as the above.

[illegible]

entered into, and they agreed between themselves that it was a good thing and that they would enter into it. The record shows that the Co-Operative Society of America had assets at this time of upwards of \$5,000,000. It is not disputed that they paid out a consideration of nearly \$300,000, in acquiring the controlling interest in the two corporations involved here. That a transaction of such magnitude, by a trust estate, possessed of such property as this Society was possessed of, could be entered into by its trustees without them knowing anything about it, would be very strange indeed. There can be no doubt of the fact that these three trustees did discuss the making of this deal and reached a conclusion about it, before it was entered into, just as Gee admitted they did, on his cross-examination. The evidence in the record does not bear out the contention that these trustees went ahead and completed this deal, on the terms which had been secured as a result of the services of Austin, covering a considerable period of time, in ignorance of the fact that he had anything to do with it or was entitled to any compensation for his services, or that any such claim was being made.

The defendants contend that the complainant had no contract with the defendants, as trustees, and that his claim, if any, was against Parker individually, citing, among other cases, Johnson v. Lehman, et al, 131 Ill. 608; Dingman v. Boyle, 285 Ill. 144, and Wahl v. Schmidt, et al, 307 Ill. 331. In the Wahl case, Schmidt was the surviving executor and trustee of his father's estate. Two of his sisters each filed bills for an accounting against him, and there were several appeals from orders of the Probate Court, entered in the matter



any such claim was being made.

of his father's estate pending in the Circuit Court. These causes were all consolidated and referred to a master in chancery for the taking of proof. A part of the property of the estate was a building used for commercial purposes in the City of Chicago. A water tank on the roof of the building collapsed by reason of defective supports, and fell through the building, killing an employee of one of the tenants. The administrator of the estate of that employee brought an action for damages against the tenant and also against Schmidt and his brother, as surviving executors and trustees of the estate of their father. The plaintiff recovered a judgment in that case, and later filed an intervening petition in the consolidated case to which reference has been made, praying for an order directing the surviving executor and trustee, to pay the judgment. After a hearing on the intervening petition, the trial court held that the intervening petitioner had a lien against the trust estate, and directed the executor and trustee to pay it in due course of administration. Upon appeal from that decree, to this court, the decree was reversed and the cause remanded, with directions to dismiss the petition. The cause was then taken to the Supreme Court, on a writ of error, and the judgment of the Appellate Court was affirmed, the Supreme Court holding that in the action at law by the administrator of the estate of the deceased employee of the tenant in the building which was a part of the property of the trust estate, the court was without jurisdiction to entertain the action or render a judgment, unless the action was against the defendant, personally. The court further held that it might look to the whole record, to determine



at his father's estate located in the County of ...  
 matter with all circumstances and referred to a master as  
 necessary for the trial of issue. A part of the property of  
 the estate was a building used for commercial purposes in  
 the City of Chicago. A water tank on the roof of the build-  
 ing sustained by reason of excessive weight, and fell through  
 the ceiling, killing an employee of one of the tenants. The  
 administrator of the estate at that employee brought an action  
 for damages against the tenant and also against the estate and  
 the tenant, as surviving executor and trustee of the estate  
 of Isaac Green. The plaintiff recovered a judgment in that  
 case, and later filed an intervention petition in the same  
 case in which judgment was given, praying for an  
 order dissolving the surviving executor and trustee, in that  
 his judgment. After a hearing on the intervention petition,  
 the trial court held that the intervention petition was a  
 nullity and the court set aside and annulled the judgment and  
 ordered to pay it in the name of the estate. The court  
 then set aside, in this case, the decree and judgment and  
 the cause removed, with directions to dismiss the petition.  
 The case was then taken to the Illinois Court, in a writ of  
 error, and the judgment of the Illinois Court was affirmed.  
 The Supreme Court holding that the action was one of the  
 administrator of the estate of the deceased employee of the  
 tenant and the building which was a part of the property of  
 the estate, the court set aside the judgment to set  
 aside the action or render a judgment, unless the action  
 was dismissed for delay, possibly. The court further

whether or not the judgment against the executor and trustee was a personal judgment against him, or a judgment to be satisfied only from the property of the trust estate, and that an examination of the record, in the case of the administrator of the estate of the deceased employee against the executor and trustee of the trust estate, disclosed that it was apparent that the only cause of action stated, was a cause of action against the defendant personally. In our opinion this case is clearly distinguishable from the suit at bar.

Referring to the other cases cited by the defendants on this point, the Dingman case merely holds that in executing their joint power, all trustees named in a will must act. In our opinion, the Johnson case is authority for the contrary of the proposition urged by the defendants. In that case, the complainant was employed as a broker, by the trustee of a trust estate, to obtain a loan for the benefit of the estate, the trustee promising to pay him a commission from the trust fund. The complainant did all the work necessary to obtain the loan, but before the transaction was fully consummated, the trustee died. A subsequent trustee consummated the deal and obtained the loan on substantially the same terms as those for which the complainant had negotiated, and thus the court found the trust had the fruits of the complainant's labor. It will be seen that in some respects the facts involved in that case were not unlike those involved in the case at bar. The court pointed out in the case cited, that the complainant had not alleged that the agreement between him and the trustee was that the trustee should not be personally liable upon their contract, or that the compensation





for obtaining the loan should be a lien on the trust fund. The court held that under these circumstances, the only remedy of the complainant for compensation, was a personal one against the trustee employing him. It will be seen that while in some respects, the facts involved in that case were very similar to those involved here, in other respects, the facts are entirely different. In the case at bar, the allegations of the complainant's amended and supplemental bill, as well as the proof, show that the express provision of the declaration of trust, under which the defendants were operating and managing the trust property, were to the effect that in no event were they to be personally liable, by reason of any contract, into which they might enter, but that in their actions, as trustees, they were "not dealing on their own responsibility as individuals, but as trustees of an express trust, under the common law." In that situation the remedy of the complainant was therefore not against the defendants or either of them, in their individual capacity, as contended.

For the reasons stated, the decree of the Circuit Court is affirmed.

DECREE AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.





340 - 22616.

CITY OF CHICAGO,

Appellee,

v.

RICHARD HUNTER,

Appellant.

5873a  
234 I.A. 637

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed June 11, 1924.

MR. JUSTICE THOMSON delivered the opinion  
of the court.

By this appeal the defendant Hunter seeks to reverse a judgment of the Municipal Court of Chicago, whereby he was fined \$200 and costs and it was further ordered that he be committed to the House of Correction of the City of Chicago, until the said fine was paid, the period of imprisonment not to exceed six months.

A complaint was filed in the case, charging that the defendant was the keeper of a disorderly house. On the day the complaint was filed, the defendant was placed under arrest and taken before the court. The record recites that the court thereupon took jurisdiction of the person of the defendant and further that the latter, being duly advised by the court as to his right to a trial by jury, elected to waive a trial by jury, whereupon he executed a formal waiver, which waiver was duly filed and appears in the record. The record then recites that the cause was, by agreement of the parties, entered into in open court, submitted to the court without a jury. A continuance was then had to another day



1980 = 100

Learning to Fly

1911

REVISED 12-1-1997

2. *Staphylococcus aureus*

Opinion filed June 11, 1954.

gizdica, mit, šarav, i drugi oblici, ali i

1. 1990-1991 2000-2001

—by at least 50% rather than the former 10%.

*Journal of Management Education*, Vol. 26 No. 7, December 2002 890-900  
© 2002 Sage Publications  
10.1177/1053426902238491  
<http://jme.sagepub.com>

[illegible]

THE UNIVERSITY OF CHICAGO

—continued to bottom right, where the text continues on the next page.

whether the points of the two

1997-1998, 1999-2000, 2001-2002, 2003-2004, 2005-2006, 2007-2008, 2009-2010, 2011-2012, 2013-2014, 2015-2016, 2017-2018, 2019-2020, 2021-2022, 2023-2024, 2025-2026, 2027-2028, 2029-2030, 2031-2032, 2033-2034, 2035-2036, 2037-2038, 2039-2040, 2041-2042, 2043-2044, 2045-2046, 2047-2048, 2049-2050, 2051-2052, 2053-2054, 2055-2056, 2057-2058, 2059-2060, 2061-2062, 2063-2064, 2065-2066, 2067-2068, 2069-2070, 2071-2072, 2073-2074, 2075-2076, 2077-2078, 2079-2080, 2081-2082, 2083-2084, 2085-2086, 2087-2088, 2089-2090, 2091-2092, 2093-2094, 2095-2096, 2097-2098, 2099-2100, 2101-2102, 2103-2104, 2105-2106, 2107-2108, 2109-2110, 2111-2112, 2113-2114, 2115-2116, 2117-2118, 2119-2120, 2121-2122, 2123-2124, 2125-2126, 2127-2128, 2129-2130, 2131-2132, 2133-2134, 2135-2136, 2137-2138, 2139-2140, 2141-2142, 2143-2144, 2145-2146, 2147-2148, 2149-2150, 2151-2152, 2153-2154, 2155-2156, 2157-2158, 2159-2160, 2161-2162, 2163-2164, 2165-2166, 2167-2168, 2169-2170, 2171-2172, 2173-2174, 2175-2176, 2177-2178, 2179-2180, 2181-2182, 2183-2184, 2185-2186, 2187-2188, 2189-2190, 2191-2192, 2193-2194, 2195-2196, 2197-2198, 2199-2200, 2201-2202, 2203-2204, 2205-2206, 2207-2208, 2209-2210, 2211-2212, 2213-2214, 2215-2216, 2217-2218, 2219-2220, 2221-2222, 2223-2224, 2225-2226, 2227-2228, 2229-2230, 2231-2232, 2233-2234, 2235-2236, 2237-2238, 2239-2240, 2241-2242, 2243-2244, 2245-2246, 2247-2248, 2249-2250, 2251-2252, 2253-2254, 2255-2256, 2257-2258, 2259-2260, 2261-2262, 2263-2264, 2265-2266, 2267-2268, 2269-2270, 2271-2272, 2273-2274, 2275-2276, 2277-2278, 2279-2280, 2281-2282, 2283-2284, 2285-2286, 2287-2288, 2289-2290, 2291-2292, 2293-2294, 2295-2296, 2297-2298, 2299-2300, 2301-2302, 2303-2304, 2305-2306, 2307-2308, 2309-2310, 2311-2312, 2313-2314, 2315-2316, 2317-2318, 2319-2320, 2321-2322, 2323-2324, 2325-2326, 2327-2328, 2329-2330, 2331-2332, 2333-2334, 2335-2336, 2337-2338, 2339-2340, 2341-2342, 2343-2344, 2345-2346, 2347-2348, 2349-2350, 2351-2352, 2353-2354, 2355-2356, 2357-2358, 2359-2360, 2361-2362, 2363-2364, 2365-2366, 2367-2368, 2369-2370, 2371-2372, 2373-2374, 2375-2376, 2377-2378, 2379-2380, 2381-2382, 2383-2384, 2385-2386, 2387-2388, 2389-2390, 2391-2392, 2393-2394, 2395-2396, 2397-2398, 2399-2400, 2401-2402, 2403-2404, 2405-2406, 2407-2408, 2409-2410, 2411-2412, 2413-2414, 2415-2416, 2417-2418, 2419-2420, 2421-2422, 2423-2424, 2425-2426, 2427-2428, 2429-2430, 2431-2432, 2433-2434, 2435-2436, 2437-2438, 2439-2440, 2441-2442, 2443-2444, 2445-2446, 2447-2448, 2449-2450, 2451-2452, 2453-2454, 2455-2456, 2457-2458, 2459-2460, 2461-2462, 2463-2464, 2465-2466, 2467-2468, 2469-2470, 2471-2472, 2473-2474, 2475-2476, 2477-2478, 2479-2480, 2481-2482, 2483-2484, 2485-2486, 2487-2488, 2489-2490, 2491-2492, 2493-2494, 2495-2496, 2497-2498, 2499-2500, 2501-2502, 2503-2504, 2505-2506, 2507-2508, 2509-2510, 2511-2512, 2513-2514, 2515-2516, 2517-2518, 2519-2520, 2521-2522, 2523-2524, 2525-2526, 2527-2528, 2529-2530, 2531-2532, 2533-2534, 2535-2536, 2537-2538, 2539-2540, 2541-2542, 2543-2544, 2545-2546, 2547-2548, 2549-2550, 2551-2552, 2553-2554, 2555-2556, 2557-2558, 2559-2560, 2561-2562, 2563-2564, 2565-2566, 2567-2568, 2569-2570, 2571-2572, 2573-2574, 2575-2576, 2577-2578, 2579-2580, 2581-2582, 2583-2584, 2585-2586, 2587-2588, 2589-2590, 2591-2592, 2593-2594, 2595-2596, 2597-2598, 2599-2600, 2601-2602, 2603-2604, 2605-2606, 2607-2608, 2609-2610, 2611-2612, 2613-2614, 2615-2616, 2617-2618, 2619-2620, 2621-2622, 2623-2624, 2625-2626, 2627-2628, 2629-2630, 2631-2632, 2633-2634, 2635-2636, 2637-2638, 2639-2640, 2641-2642, 2643-2644, 2645-2646, 2647-2648, 2649-2650, 2651-2652, 2653-2654, 2655-2656, 2657-2658, 2659-2660, 2661-2662, 2663-2664, 2665-2666, 2667-2668, 2669-2670, 2671-2672, 2673-2674, 2675-2676, 2677-2678, 2679-2680, 2681-2682, 2683-2684, 2685-2686, 2687-2688, 2689-2690, 2691-2692, 2693-2694, 2695-2696, 2697-2698, 2699-2700, 2701-2702, 2703-2704, 2705-2706, 2707-2708, 2709-2710, 2711-2712, 2713-2714, 2715-2716, 2717-2718, 2719-2720, 2721-2722, 2723-2724, 2725-2726, 2727-2728, 2729-2730, 2731-2732, 2733-2734, 2735-2736, 2737-2738, 2739-2740, 27

As indicated in the figure, the model is based on the following assumptions:

*(Faint, illegible text at the bottom of the page)*

[illegible]

202 To receive and to distribute and to deliver to the

...and the ...

and therefore, we must not forget to mention that the same is true for the other side of the coin.

... ..

101 30. September 1901. 101 30. September 1901.

and when the cause came on for trial on the latter day, the defendant moved the court for leave to withdraw his jury waiver. The court denied that motion. The only error alleged by the defendant in support of his appeal, is the action of the trial court in denying his motion for leave to withdraw the jury waiver. The common law record only is before us.

In support of the contention made, the defendant has referred us to several cases holding it to be error to deny the motion of a defendant for leave to withdraw a jury waiver previously executed by him, where such motion is presented before the trial has actually been begun. The cases thus referred to are all criminal cases. In several of them, the jury waiver involved had been signed before the defendant had been formally arraigned and before he had entered a plea, and at a time, therefore, as the courts pointed out, when there was no issue formed or pending.

The case at bar was not such a case. It was not a criminal case but a quasi-criminal case, which is a case of the fifth class, as provided by the Municipal Court Act. Neither an arraignment nor the entering of a formal plea was required to make an issue for the court's determination. Section 3 of the Municipal Court Act, (Ill. Sts. J. & A. ch. 37, par. 3315) provides that "in all cases of the fifth class, the issues shall be determined without other forms of written pleadings than those hereinafter expressly prescribed or provided for." No form of written pleading in this class of cases, is thereafter prescribed or provided for in the Act.



and when the other came on (as stated on the first day, the  
testimony shows the court has found in witness his very  
evidence. The court found the evidence. The only error alleged  
by the defendant is in regard to the evidence. In the opinion of  
the trial court in granting the motion for leave to withdraw  
the jury verdict. The court has found in witness his very

In regard to the evidence in this case, the defendant  
has followed an old system of evidence which is so stated in  
the opinion of a defendant for leave to withdraw a jury  
verdict previously granted by him, where such motion is made  
before the trial has actually begun. The trial  
court refused to set aside the verdict. In regard to this,  
the jury verdict rendered has been signed before the evidence  
has been actually presented and before the jury has rendered  
their verdict at a time, therefore, as the court has found  
that there was no error found in this case.

The case of the first day was a case. It was  
not a criminal case, but a civil case, which is a  
case at the first trial, as stated by the defendant's  
counsel. There is no assignment for the evidence in a criminal  
case was required to show to the court for the court to determine  
that. Whether it is the defendant's case, the trial is a  
civil case. With regard to the evidence in this case, the  
court has found that the evidence is not sufficient to support  
the verdict. The court has found that the evidence is not  
sufficient to support the verdict. The court has found that the  
evidence is not sufficient to support the verdict. The court has  
found that the evidence is not sufficient to support the verdict.

Section 49 of the Act (Ill. Statutes J.& A. ch. 37 par. 3362.) prescribes the practice in this class of cases and no requirement as to either formal arraignment or the filing of a plea, is there mentioned, but it is merely provided that where one is placed under arrest, charged with a violation of a city ordinance, he "shall, without unnecessary delay be taken by such officer to some convenient branch of the Municipal Court" where the complaint, theretofore issued, shall be filed, "and such defendant shall thereupon be dealt with according to the law in the same manner as if he had been arrested in the first instance under a warrant lawfully issued." The same section provides that where one is arrested on a warrant, charged with violation of an ordinance, he shall "be taken before the court to which such warrant is returnable and tried for the alleged offense." The Cities and Villages Act (Ill. Sts. J.&A. ch. 24, Par. 1709) contains a provision to the same effect. The record recites that when the defendant executed a jury waiver, after having been duly advised by the court as to his rights in the premises, the cause was "by agreement in open court between the parties hereto, submitted to the court for trial without a jury." While it has been held that a suit by a city to recover a penalty for violation of an ordinance is a civil suit, to which rules governing criminal procedure do not apply, City of Chicago v. Williams, 254 Ill. 380, this court held in City of Chicago v. Dickson, 221 Ill. App. 255, that the requirements as to pleadings were not those provided for in civil suits but that "the modern procedure to enforce such a penalty is quasi-criminal," citing Wiggins v. City of Chicago, 68 Ill. 373; Maylor v. City of





Galesburg, 56 Ill. 285; State v. Robitsek, 60 Minn. 183.

The mode of procedure in quasi-criminal cases, tried in the Municipal Court of Chicago, is specifically provided for in the Municipal Court Act, to which reference has been made, and under that procedure, it could not be said that the case at bar was not at issue and before the court for trial and disposition when the defendant, as shown by the record, was properly advised and executed the jury waiver.

It is argued that a trial by jury is a constitutional right which will be jealously guarded and a motion by a defendant for leave to withdraw a waiver of it will not lightly be denied. In our opinion that contention would be more appropriate if this were a criminal case. In City of Chicago v. Knoble, 233 Ill. 112, a quasi-criminal action to recover a penalty for the violation of a city ordinance, brought in the Municipal Court of Chicago, the defendant contended that section 25 of the Municipal Court Act was unconstitutional, in that it required that petit jurors be drawn from the county rather than from within the limits of the City of Chicago, the claim being that certain constitutional provisions as to right to trial by jury were thereby violated. The court said, "We think it is clear that this action, being one to recover a penalty for violation of a city ordinance, is not a criminal prosecution but a civil suit, that such a penalty could not be recovered in criminal proceedings. (citing cases) This being so, section 2 of Art. 2 (of the Constitution) cannot be here invoked."

The defendant was charged in the complaint with, and was found guilty of, a violation of section 2019 of the



...the ... of the ...

The ... of the ...

...the ... of the ...

The ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

It is ... that ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

...the ... of the ...

The ... of the ...

Chicago Code of 1911. The only penalty therein provided for is a fine not exceeding \$200 for each offense. That was the penalty sued for in this case. The Cities and Villages Act (Ill. Statutes J. & A. ch. 24, par. 1709) provides that "in all actions for the violation of any ordinance of any city \* \* \* any person upon whom any fine or penalty shall be imposed, may, upon order of the court" be imprisoned "until such fine, penalty and costs shall be fully paid." Just as in the case of tort judgments, under certain circumstances, so here, imprisonment is provided for until the judgment, fine or penalty is paid, not as punishment for the act or offense involved, but because of the refusal or failure of the defendant to pay the judgment, fine or penalty.

Inasmuch as this was not a criminal case, but a quasi-criminal proceeding to recover a penalty for the violation of a City ordinance, we are of the opinion that it was within the discretion of the trial court to deny the defendant's motion for leave to withdraw his jury waiver, and no error is shown to have been committed in so doing. That the defendant was guilty of keeping a disorderly house, as charged in the complaint, is not denied. That the evidence was such as to warrant the court's finding to that effect, must be presumed.

For the reasons stated, the judgment appealed from is affirmed.

JUDGMENT AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.



-1-

Chicago Code of 1911. The only penalty therein provided for is a fine not exceeding \$100 for each offense. This was the penalty then for in this case. The citation and violation are (1911, violation 1.1-1, sec. 1700) provides that "in all matters for the violation of any ordinance of any city" "any person who upon any time or penalty shall be imposed, may, upon notice of the court, be imprisoned "until such time, penalty and costs shall be fully paid." That he is the one to have judgment, which certain circumstances, as here, imprisonment is provided for until the judgment, then or penalty is paid, and is punishment for the act or offense involved, not because of the refusal or failure of the defendant to pay the judgment, time or penalty.

It appears as that was a criminal case, not a quasi-criminal proceeding as against a person for the violation of a city ordinance, as one of the points that is made within the discussion of the trial was to say the defendant's motion for leave to withdraw his plea failed, and no error is shown to have been committed in so doing. That the defendant was guilty of violating a city ordinance, as charged in the complaint, is not denied. That the violation was such as to warrant the court's finding as that stated, must be proved.

For the reasons stated, the judgment awarded the is affirmed.

THOMAS ALSTON.

617  
341 - 26617

CITY OF CHICAGO,

Appellee,

v.

ESTER GORMAN,

Appellant.

387 Ha  
APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

234 I.A. 637

Opinion filed June 11, 1924.

MR. JUSTICE THOMSON delivered the opinion of the court.

A complaint was filed in the Municipal Court of Chicago, charging that the defendant, Ester Gorman, was an inmate of a disorderly house. She was arrested without warrant and upon being brought before the court, she waived her right to a trial by jury. Subsequently, and before the hearing of the case was begun, she made a motion for leave to withdraw the jury waiver she had executed. This motion was denied. The court heard the evidence, found the defendant guilty and imposed a fine of \$5.00 and costs, and ordered that she be imprisoned in the House of Correction of the City of Chicago until such fine and costs had been paid.

In support of her appeal, the defendant contends that the trial court erred in denying her motion for leave to withdraw the jury waiver she had executed. This case was consolidated for hearing in this court, with the case of City of Chicago v. Gorman, case No. 26616, in which we are this day filing an opinion. The questions involved in the case at bar are precisely the same as those involved in case No. 26616.



100-10000

3874

RECEIVED  
JULY 1900

3874

Original filed July 19, 1900

RECEIVED JULY 19, 1900

100-10000

A complaint was filed in this court July 19, 1900

against the Chicago & North Western Railway Company

for damages for the loss of a trunk containing papers

and other articles belonging to the plaintiff

on July 19, 1900. The complaint was filed in

the name of the plaintiff and was signed by the

plaintiff and was filed in the court on July 19, 1900

and was returned to the plaintiff on July 19, 1900

and was returned to the plaintiff on July 19, 1900

and was returned to the plaintiff on July 19, 1900

and was returned to the plaintiff on July 19, 1900

and was returned to the plaintiff on July 19, 1900

and was returned to the plaintiff on July 19, 1900

and was returned to the plaintiff on July 19, 1900

and was returned to the plaintiff on July 19, 1900

and was returned to the plaintiff on July 19, 1900

and was returned to the plaintiff on July 19, 1900

The City Ordinance involved is the same, being sec. 2019 of the Chicago Code of 1911, providing that every disorderly house is thereby declared to be a public nuisance and that "the keeper and all persons connected with the maintenance thereof, and all persons patronizing or frequenting the same, shall be fined not exceeding two hundred dollars for each offense."

It will be unnecessary to set forth at length here, what we have included in our opinion filed in case No. 28616. For reasons stated in that opinion, the judgment of the Municipal Court of Chicago, appealed from, in the case at bar, is affirmed.

JUDGMENT AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.





The only defendant involved in the case, being well held  
of the Orange date of 1911, concluding that every defendant  
is now in the hands of the law, and is a public nuisance and  
that the house and all persons connected with the same  
are thereby, and all persons participating in the same  
now, shall be held as accessory to the same before the  
court of law.

It will be necessary to let the law be  
done, and we have decided to now submit this in case of  
this. The house and all persons connected with the same  
the defendant of this, and the law is the law  
as well as the law.

THE COURT OF LAW

THE COURT OF LAW, 1911, is now

343 - 28618

CITY OF CHICAGO,

Appellee,

v.

HAZEL BROWN,

Appellant.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

234 I.A. 637

Opinion filed June 11, 1924.

MR. JUSTICE THOMSON delivered the opinion of the court.

By this appeal, the defendant, Hazel Brown, seeks to reverse a judgment of the Municipal Court of Chicago, whereby she was found guilty of being an inmate of a disorderly house and was ordered to pay a fine of \$5.00 and costs, and by which it was further ordered that she be committed to the House of Correction of the City of Chicago, and be there confined until said fine and costs were paid.

This case was consolidated for hearing in this court, with the cases of City of Chicago v. Hunter, case No. 28618, and City of Chicago v. Gorman, case No. 28617, in both of which opinions are this day being filed.

The questions involved in the case at bar are precisely the same as those involved in the two cases referred to. It will be unnecessary to set forth here, what has been included in the opinions filed in those cases.

For the reasons there stated, the judgment of the Municipal Court of Chicago, appealed from in the case at bar is affirmed.

JUDGMENT AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.



25872

25872

25872

Opinion filed June 11, 1934.

MR. JUSTICE THOMAS delivered the opinion of the

court.

By this appeal, the respondent, Mrs. Mary, seeks to  
reverse a judgment of the Circuit Court of Cook County  
which was rendered in favor of the appellant, Mrs. Mary,  
and was entered on May 1, 1933, and which, on the day  
of the trial, was the subject of the appeal. The case  
arose out of the fact that the respondent, Mrs. Mary,  
and the appellant, Mrs. Mary, were both married to the  
same man, and that the respondent, Mrs. Mary, was  
the wife of the appellant, Mrs. Mary.

This case was brought to the court in 1933, and  
the court, in its opinion, held that the respondent,  
Mrs. Mary, was the wife of the appellant, Mrs. Mary,  
and that the appellant, Mrs. Mary, was the wife of  
the respondent, Mrs. Mary.

The question involved in the case is the right  
of the respondent, Mrs. Mary, to the property of the  
appellant, Mrs. Mary, and the court, in its opinion,  
held that the respondent, Mrs. Mary, was entitled to  
the property of the appellant, Mrs. Mary.

For the reasons above stated, the judgment of the  
Circuit Court of Cook County, rendered on May 1, 1933,  
is affirmed.

343 - 28619

CITY OF CHICAGO,

Appellee,

v.

GEORGIE CLARK,

Appellant.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

234 I.A. 638

Opinion filed June 11, 1924.

MR. JUSTICE THOMSON delivered the opinion of the court.

By this appeal, the defendant Georgie Clark seeks to reverse a judgment of the Municipal Court of Chicago, whereby she was found guilty of being the keeper of a disorderly house and was ordered to pay a fine of \$5.00 and costs, and by which it was further ordered that she be committed to the House of Correction of the City of Chicago, and there be confined until said fine and costs were paid.

This case was consolidated for hearing in this court, with the cases of City of Chicago v. Hunter, case No. 28616, and City of Chicago v. Gorman, case No. 28617, in both of which, opinions are this day being filed.

The questions involved in the case at bar are precisely the same as those involved in the two cases referred to. It will be unnecessary to set forth here, what has been included in the opinions filed in those cases.

For the reasons stated, the judgment of the Municipal Court of Chicago, appealed from in the case at bar, is affirmed.

JUDGMENT AFFIRMED.

TAYLOR, P.J. AND O'CONNOR, J. CONCUR.



*[Faint, illegible text]*

883 ALPS

Collection of the Smithsonian Institution

7. *Pyroclastic*

1944-1945

...and it is time England did to invent a career of

also, which is to suggest all asked to yellow blood and red

at San Jose on 25.22 to visit a group of residents who had signed

...and the ... ..

THE UNIVERSITY OF CHICAGO PRESS

... 卷一百一十五 卷一百一十六 卷一百一十七 卷一百一十八 卷一百一十九 卷一百二十

There still is no record of the date of the first meeting.

THIS IS THE NAME OF THE MAN WHO WAS KILLED

1990-1991

1980年1月1日

[illegible]

... ..

and 1960 and 1961, respectively, and the 1962-1963 season.

*[Faint handwritten notes at the bottom of the page]*

1. What is the purpose of the study?  
 2. What are the research questions or hypotheses?  
 3. What is the study design?  
 4. What are the variables?  
 5. What are the data collection methods?  
 6. What are the results?  
 7. What are the conclusions?  
 8. What are the limitations?  
 9. What are the implications?  
 10. What are the future directions?

• Duration of work for each day of work schedule, which is fixed

641  
21 - 28641

JACOB SCHWARTZ, trading as  
SCHWARTZ & SCHWARTZ,

Defendant in Error.

v.

JOHN LUX AND MARIA LUX,

Plaintiffs in Error.

3877a  
234 I.A. 638

ERRON TO

MUNICIPAL COURT

OF CHICAGO.

Opinion filed June 25., 1924.

MR. PRESIDING JUSTICE O'CONNOR delivered the  
opinion of the court.

Plaintiff brought an action of the fourth class  
against the defendants, William Moran, Delia Moran, John  
Lux and Maria Lux, seeking to recover \$350.00. The defend-  
ants John and Maria Lux were served and the summons returned  
not found as to the other two defendants. The summons was  
returnable December 8, 1923, and on that date none of the  
defendants having appeared, a default and judgment were enter-  
ed as to the defendants John and Maria lux for \$350.00 in  
favor of plaintiff on his statement of claim.

On January 18th, the record disclosed that John and  
Maria Lux entered their appearance and on the same day an order  
was entered granting them leave to file a petition to vacate  
the judgment. The petition does not appear in the record, but  
the same order which gave them leave to file it, states that  
the plaintiff demurred to it and the demurrer was sustained.  
On February 20th following a writ of scire facias was issued  
to make the defendants William and Delia Moran parties to the  
judgment. They were served by the bailiff and on the 26th



880 A. 1133

RECEIVED  
JUN 28 1934

RECEIVED  
JUN 28 1934

Opinion filed June 28, 1934.

IN RE: [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

[illegible]

of February entered their appearance, and the next day an order was entered, giving them leave to file an affidavit of merits within ten days. Afterwards another order was entered extending their time in this respect. On March 15th, 1923, an order was entered on motion of the defendants, requiring plaintiff to file a copy of the instrument sued on and on the same day a copy of what purports to be such instrument was filed. On March 20th, on motion of the defendants Moran, the court struck the statement of claim from the files. This order was vacated and set aside on March 23rd. The next that appears in the record is that on March 23rd a writ of error was sued out from this court.

The substance of plaintiff's statement of claim is that he was a licensed real estate broker and on the 11th of August, 1922 the defendants William Moran and Delia Moran, his wife, entered into a written agreement authorizing plaintiff to sell a certain piece of real estate known as No. 3102 Sheffield avenue, Chicago, Illinois; that afterwards plaintiff submitted the property to the defendants John and Maria Lux who agreed to purchase the property and paid plaintiff \$1,000.00 to apply on the purchase price. It is further alleged in the statement of claim that the defendants William and Delia Moran, promised to pay plaintiff for his services in obtaining a purchaser for the property an amount of \$250.00; that on the 12th day of August, 1922, the defendants John and Maria Lux executed a contract for the purchase of the property; that plaintiff submitted the contract for execution to the defendants William and Delia Moran, but that they refused to execute it and refused to pay his commission



[illegible][illegible]

as agreed; that thereafter on the 19th of August, 1932, he refunded the \$1,000.00 to the defendants John and Maria Lux. It is further alleged that afterwards, on the 30th day of October, 1932, William and Delia Horan conveyed the property by warranty deed to Lux and his wife. The plaintiff then alleges in his statement of claim that by virtue of these facts the defendants became indebted to him in the sum of \$350.00.

A great many points are urged by the defendants John and Maria Lux why the judgment should be reversed, but it is unnecessary to pass upon them, because it is obvious that there is no liability under any theory of the case against John and Maria Lux. They were in no way obligated to pay plaintiff any sum. The defendant Horan and his wife as appeared from the statement of claim, promised to pay plaintiff \$350.00, if he would obtain a purchaser for their real estate. Plaintiff avers that he found defendant Lux and his wife, entered into an agreement with them and received \$1,000.00 down, but that Horan refused to sell the property, and that plaintiff returned the \$1,000.00 to Lux and his wife; that later on he discovered that Horan had sold the property to Lux. Under the record as above stated, it is obvious that neither Lux nor his wife had promised in any way to pay any commissions to plaintiff in the transaction.

A writ of error searches the entire record. Drummer  
Greek Drain. Dist. v. Roth, 244 Ill. 88; Ellguth v. Ellguth,  
250 Ill. 214, and there being no basis for any liability on  
1  
behalf of the defendants Lux and his wife, there was no warrant  
in entering the judgment against them, and it is reversed.





-4-

The judgment of the Municipal Court is reversed.

REVERSED.

THOMSON, J. & TAYLOR, J. CONCUR.



Journal of the American Medical Association

CHICAGO, ILL.

Volume 1, Number 1, January 1, 1917

45 - 28890

LOUETTA FARWELL,

Plaintiff in Error,

v.

AVA W. FARWELL,

Defendant in Error.

38780  
224 I.A. 638

ERROR TO

CIRCUIT COURT,

COCK COUNTY.

Opinion filed June 25, 1924.

MR. PRESIDING JUSTICE O'CONNOR delivered the opinion of the court.

Plaintiff brought an action to recover damages against the defendant claiming that the defendant who was her mother-in-law had alienated her husband's affections and caused him to leave her. There was a verdict and judgment in the defendant's favor, to reverse which plaintiff prosecutes this writ of error.

The record discloses that plaintiff when 28 years old was lawfully married on October 19, 1904, to John Arthur Farwell, the defendant's son, who at that time was 30 years old; that they lived together as husband and wife until June 15, 1915, when he left her and they have not lived together since that time.

Plaintiff's position is that the separation was brought about by the actions and conduct of her mother-in-law, the defendant. On the other hand the theory of the defendant is that she did not cause the separation, but that the husband left plaintiff on account of another woman.



Handwritten number 288

888-11-88	CLASSIFIED BY	DATE
888-11-88	CLASSIFIED BY	DATE
888-11-88	CLASSIFIED BY	DATE

Opinion filed June 25, 1934.

Mr. Justice Brandeis delivered the

opinion of the court.

Plaintiff brought an action to recover damages against the defendant claiming that the defendant had used the plaintiff's name for advertising purposes without his consent. The plaintiff claimed that the defendant had used his name in the defendant's letter to various other persons.

The court found that the plaintiff had not shown that the defendant had used his name for advertising purposes without his consent. The court found that the defendant had used the plaintiff's name in the defendant's letter to various other persons.

The court found that the plaintiff had not shown that the defendant had used his name for advertising purposes without his consent. The court found that the defendant had used the plaintiff's name in the defendant's letter to various other persons.

The declaration was in two counts and charged that on or about March 1, 1915, the defendant wilfully and maliciously destroyed and alienated from plaintiff, without her consent, the affections of plaintiff's husband. The pleas which remained at the time the cause went to trial were the general issue and the five years Statute of Limitations, upon which issue was joined. The suit was begun March 4, 1918, and went to trial April 25, 1921. The record is voluminous, containing 3558 pages and in the view we take of the case it will be necessary to discuss the evidence in detail.

Mrs. William Dudley, testified for the plaintiff, that she was a Christian Scientist Practitioner and had treated the defendant; that she met her seven or eight times during the year 1914, and the winter of 1915; that in 1916, she had a conference at the request of the defendant at the latter's home; that at that time the defendant's son, plaintiff's husband was present; that the defendant stated she had called the witness to tell her about all the trouble she was in with her daughter-in-law; that her son, the plaintiff's husband, (who for convenience will be referred to in this opinion as, Arthur) had left his wife and had come home; that she believed plaintiff through an attorney threatened to bring an alienation suit against the defendant. The witness further testified that the son stated he had been trying to negotiate through some attorney to bring about a divorce; that he had no grounds for a divorce, but he would like to make some arrangements with his wife whereby she would get a divorce at once from him; that he had consulted with another lawyer to negotiate with plaintiff's attorney in regard to a settlement with his wife in case she got a divorce;



The defendant was in the house and during that  
on or about March 1, 1933, the defendant willingly and unlawfully  
It happened and arranged that defendant, without her husband,  
the attention of plaintiff's husband. The time which plaintiff  
of the time the same were in total were the longest time and  
the five years statute of limitation, upon which issue was  
joined. The suit was begun March 4, 1933, and was in total  
April 29, 1934. The record in defendant's handwriting was  
pages and in the case on file of the case it will be found  
not to discuss the evidence in detail.

Now, William Duffey, testified to the plaintiff,  
that she was a certain defendant's investigation and was  
located the defendant; that she had never or likely never  
during the year 1931, and the winter of 1932 and in 1933,  
she had a conference of the defendant of the defendant at the  
defendant's house; that at that time the defendant's name, which  
1933's records was given; that the defendant stated she  
had called the witness in 1931 but could not find the house  
she was in with her husband-in-law that she had the claim  
with her husband, (she for convenience will be referred to as  
her witness on, further) but that she did not know where  
that she believed defendant's house, as defendant's husband  
he being an alienation suit against the defendant. The wit-  
ness further testified that she was unable to find her son  
but he certainly should have been able to find her son  
lives; that he had no grounds for a divorce and he would  
like to have some correspondence with his wife's family and would  
not a divorce and would then find that he was married again

that she was then told that plaintiff was consulting with a Mrs. Charnley, another Christian Scientist Practitioner, and that at the request of the defendant, she went to see Mrs. Charnley, to ascertain plaintiff's attitude toward the defendant and as to what might be done; that after calling on Mrs. Charnley, the witness again saw the defendant and reported to the latter that Mrs. Charnley had said that there was no doubt in her mind but that the defendant had for many years been trying to alienate the affections of the son from his wife; that she had heard from Mrs. Charnley and a Mrs. Wallace that the defendant had mistreated plaintiff; that upon informing the defendant of this, the latter said it was not true. The witness then identified and there was offered in evidence, a letter from the defendant to her, dated January 9, 1916, in which the defendant stated that she was up early that morning waiting for breakfast; that the trunks were about ready to go and requested the witness do the best she could for her in reference to some physical ailments. The letter further stated there was a check of \$75.00 enclosed in payment of the witness's services. She further testified that at the conference she had with the defendant when Arthur was present, he said that he hoped his wife would accept the offer of settlement he was making through his attorney and get a divorce immediately, and that the defendant at that time stated she was willing that Arthur should be separated from his wife; that afterwards she saw the defendant and Arthur who stated that plaintiff's attorney had turned down his offer; that the defendant then stated she was going to leave with Arthur for Nassau in the Bahamas Islands; that he was arranging to get rid of everything he had; that they had decided to cut off all



that she was then told that Plaintiff was communicating with  
her through another person, Plaintiff's friend, and that she was  
that of the report of the defendant, and that she was  
thereby, in answer to Plaintiff's question, and that she  
thought that she was right in doing that after talking to  
her. Plaintiff, the witness again says the defendant said she  
was in the latter part of the year, but that she  
was so busy in her mind that she did not know for sure  
about being in Plaintiff's company at the time she was  
with her and that she was with Plaintiff and a few others  
that the defendant had indicated Plaintiff had been in  
the defendant's office, the latter said it was untrue.  
The witness then identified and there was shown in evidence  
a letter from the defendant to her, dated January 21, 1932, in  
which the defendant stated that she was up with her during  
the last two months of the year and that she was in  
and requested the witness to see her and that she was in  
reference to some physical ailment. The latter further  
stated there was a check of \$75.00 made in payment of the  
defendant's expenses. The witness testified that at the time  
she was with the defendant she was not present, but  
that she was with the witness during the time of the  
defendant's stay, the witness said that she was with the  
defendant, and that the defendant at that time stated she was  
saying that after she had been requested from the other time  
afterwards she was the defendant and that she was with the  
defendant's company and that she was with the defendant for  
the time being and she was going to leave with the defendant for

of plaintiff's support; that her lawyer told her that if she left, she would not be served in the alienation suit; that the defendant stated she understood that plaintiff would bring a suit against her unless she was paid a proper amount; that notices were prepared for publication to the effect that Arthur would no longer be responsible for his wife's bills and which would be put in the papers after they had left Chicago. She then identified and there was put into the record a letter from the defendant dated January 14, 1916, from Nassau, stating that Arthur was anxious to have the notices published as soon as possible, therefore, they thought it was better to get out of the country and the defendant decided to go with him; that she hoped they would soon receive letters from her attorney telling them what had occurred after the notices had appeared in the newspapers. Two other letters from the defendant to the witness were offered in evidence dated January 21, 1916, and February 1, 1916, the first apparently coming from Nassau and the latter from New York. In these letters matters of a personal nature are mentioned, but nothing material bearing on the case. The letter of January 21st, stated that the attorney had sent a clipping from the "News", apparently in reference to the publication of the notices, and it was then stated that she hoped that Arthur's matters would soon be settled satisfactorily; that she did not like to leave him down there alone; that she hoped he could return home instead of going to England or France, but that no one could tell what plaintiff might try to do and requested the witness to write her anything she might learn from plaintiff, Mrs. Charnley or Mrs. Wallace. In the letter of February 1st, it was stated that the defendant was in New York and after Arthur



At this point it is necessary to say that the fact that the  
 the fact, the would not be proved in the affirmative with  
 that the defendant's version was substantially true. It is  
 would bring a suit against the witness and against the  
 proper remedy. The evidence was prepared for presentation  
 in the fact that the witness would be responsible  
 for his own belief and that he would be put in the position  
 after that fact. The fact is that the defendant  
 there was not taken the witness a letter from the defendant  
 dated January 10, 1916, from the witness, stating that he  
 was anxious to have the witness published as soon as possible  
 this, however, was not done. It was ordered to put out all  
 the money and the defendant decided to go out and that  
 the paper they would make receive letters from the witness  
 believing that the witness was the witness and was  
 in the newspaper. The other letters from the defendant  
 to the witness were offered in evidence dated January 11,  
 1916, and January 1, 1916, the first apparently coming from  
 the witness and the letter from the witness. In these letters was  
 one of a personal nature and was not, but was a letter  
 written on the same. The letter of January 11, 1916, states that  
 the witness had sent a letter from the "New York" newspaper  
 in reference to the publication of the witness, and it was  
 then stated that the paper had taken the witness's name and was  
 as stated in the newspaper that the fact was the witness  
 his name was not taken and the fact was that the witness was  
 instead of being in England or France, but that he was in  
 fact was in England and he was prepared to witness  
 to write his name and the fact was that the witness was

was located, she thought it was her duty "To think of myself and my eyes" as they were bothering her in the sunlight at Nassau; that the attorney had written that plaintiff's counsel was very angry when he learned that Arthur had left the country and threatened to have his passport revoked; that she hoped a settlement would be made before long and was curious to know of any information obtained from Mrs.

Charnley; that she thought plaintiff was unreasonable and thought Arthur's last proposition was too generous, in that he was to give her a liberal income for life; that whatever settlement was made, it could only be until plaintiff remarried, with a premium if she did so. The witness further testified that about four weeks after receiving the last letter, she, in response to a telephone request, went to defendant's house, the latter having returned from New York; that she was advised by the defendant that she had been served in the alienation suit and requested the witness to go with her to the defendant's counsel in reference to the matter, which was done; that after she and the defendant had left counsel's office, they went to see another attorney, and afterwards that she had a further conversation with the defendant at the latter's home; that the defendant said she thought it would be advisable to go to Toronto, Canada, and tell Arthur, who was at that place, that her counsel advised that there be no further negotiations with plaintiff in reference to a divorce until the period of desertion had expired, because if this were not done and plaintiff should obtain a divorce, she might afterwards contend there had been collusion; that defendant further stated her counsel had advised her to create a trust of her property so that plaintiff would



was located, she thought it was her duty to look at myself  
and my eyes, as they were looking at the wall, and  
looking at the attorney and looking at the wall, and  
and was very happy when he looked at me and said  
country and returned to have his papers returned; that  
the house a settlement would be made before long and was  
entirely in line of my information about the  
country that the country should be returned to  
the country's laws, and the country's laws, and the  
he was to give her a liberal income for life, and  
settlement was made, it could only be made, and  
settled, with a provision to the end of the  
settled that when they were after twenty years, the  
settled, she is returned to a settlement, and  
attorney's house, the latter having returned from the  
that she was advised by the attorney that she had been wrong  
in the settlement and was returned to the country to be with  
her in the settlement's country in return to the country,  
which was made; that when she was returned to the  
country's office, they went to see another attorney, and  
attorney that she had a large settlement with the  
country at the attorney's house; that the settlement was  
though it would be advisable to go to London, and  
tell her, she was at that time, and she was  
that there be no further settlement with the country in return  
and to a divorce until the matter of settlement and return,  
because it was not done and plaintiff should remain  
a divorce, and after settlement returned their law office  
and the defendant's house, and the defendant's house

not bring any further suits against the defendant. She further testified that the defendant said that at one time Arthur had stated that he would go back to his wife if she wished him to do so, and that she replied that she did not, but wanted him to be happy; that a week later the witness and the defendant went to see Arthur at Toronto and had a conversation with him there; that the defendant told Arthur she had been to her counsel and took the matter of the alienation suit up as she had been served with summons; that her counsel advised that if Arthur wished to be divorced from his wife, it would be wise to wait the two years desertion period; that counsel had advised no further negotiations in the alienation suit, but recommended fighting the case, and that the defendant create a spendthrift trust; that then plaintiff would see that it would be useless for her to press further suits against the defendant; that Arthur upon being so advised by his mother, objected and stated he wished the divorce as soon as possible; that he was dissatisfied with his lawyer and desired a change; that the witness then mentioned another counsel in Chicago and Arthur then asked his mother if it would be agreeable to retain him in the divorce matter upon her return, which she agreed to do; that a few days afterwards the witness and the defendant returned to Chicago, they met the new counsel and had a talk over the matter of Arthur's obtaining a divorce and as to what sum of money plaintiff would demand in that matter; that a few days later there was another conversation and defendant stated that she had received a letter from her son, asking that the new counsel go to Toronto to see him; that this was done and after counsel had returned from Toronto, and at the request of defendant the



and being my father's wife against the defendant. The law  
then provided that the defendant was to be put to the proof  
and stated that he would go back to his wife if she would  
live to do so, and that she replied that she did not, but  
wanted him to be happy; that a week later the witness and  
the defendant went to see a doctor at Toronto and had a con-  
versation with him about the defendant's wife's health  
and had been to his counsel and took the matter of the  
defendant's wife up to him and been treated with sympathy;  
that her counsel advised that it would be better for her to  
remain with her wife, it would be better for her to  
remain with her wife; that counsel had advised her to remain  
with her wife, but the defendant said, but I cannot do this  
long the way, and that the defendant would be responsible  
for her; that then plaintiff would see that it would be better  
for her to remain with her wife against the defendant; that  
thereafter being advised by his counsel, he would not  
stayed he stated the divorce was now no longer; that he  
was dissatisfied with his lawyer and desired a change; that  
the witness then continued to remain in charge and  
after that time the witness it is would be responsible for  
the witness in the divorce matter upon her return, which  
she agreed to say that a few days afterwards the witness  
and the defendant returned to Chicago, they and the two  
children had had a talk over the matter at plaintiff's house  
and a divorce and as to what was of money plaintiff would  
behold in that matter that a few days later they were  
another conversation and defendant stated that she had decided  
to go to her father's house and asked that the law should go to  
provide to her that she was now and after counsel had

two went to counsel's office. After leaving the office, they discussed the matter and the defendant said that counsel told her of his conference with Arthur in Toronto; that Arthur had objected to getting a divorce without knowing exactly the grounds of the divorce, and that none would be gotten unless his wife agreed and signed "a penalty clause"; that about a week later, at the defendant's request, they again went to see Arthur's counsel to see what success, if any, he had made in negotiating with the plaintiff's counsel about the divorce; that after leaving the office, the defendant said that counsel stated he had offered \$300.00 per month to be paid by Arthur, and that he was to return to Chicago; that a few days afterwards the defendant told the witness that she had heard from Arthur and that he was coming home; that she thought he could be persuaded to wait until the desertion period had expired before obtaining a divorce; that a few days thereafter, Arthur returned, which was about May, 1916. The defendant stated that she had talked with her son and told him she had made up her mind not to encourage a divorce until after the two years had expired, but the son objected, insisting that negotiations be entered into at once so that a divorce might be obtained; that the defendant said that she had authorized counsel to pay \$300.00 per month, to the plaintiff; that a few days afterwards she again went with the defendant to the lawyer's office and met Arthur there; that Arthur stated he would not consent to a divorce unless there was a "penalty clause" attached; that plaintiff's counsel objected to this; that afterwards there were a number of other conferences in reference to the same matter; that shortly thereafter the



[illegible]

witness again saw the defendant and the latter stated that she had seen her counsel in the alienation suit and he had advised her to get Arthur out of the city, because he was annoying the defendant; that shortly thereafter Arthur left the city, and that defendant stated he had decided to remain away until there was a divorce; that she did not wish to have the alienation suit tried or to have any publicity, and was going to authorize Arthur's counsel to pay \$200.00 per month so that the alienation suit would not be tried; that later she had a further conversation with the defendant in which the latter stated she did not wish to discontinue the payments on account of the alienation suit; that about January, 1917, defendant called her, the witness, on the telephone and advised her that she decided to consult another practitioner, Mrs. Childs, and to discontinue the payments; that a few days afterwards, the witness at the defendant's request, attended a theatre with her; that about a month afterwards she at the request of the defendant, went to the latter's home and the latter told her that she and Mrs. Childs had gone to see the plaintiff; that the visit was not a pleasant one; that two or three weeks later, the witness again called at the defendant's home and was told by the defendant that Arthur had been to see her; that she told the witness she wished to settle with plaintiff for a lump sum and withdraw the monthly payments she had been making; that two or three weeks afterwards the defendant told her that she had authorized an offer to be made to pay to plaintiff \$30,000.00 or \$35,000.00 for a settlement, and that a divorce be obtained. The witness then detailed other meetings she had with the defendant up to the month of May, 1918; that she was a witness to the execution of the spendthrift



witness again saw the defendant and the latter stated that she  
had seen her husband in the afternoon and he had seemed  
but to her father and to the wife, however he was carrying  
the defendant; that shortly thereafter during the night  
and that defendant stated he was killed in several ways  
there was a statement that she did not know the name of the  
man who told her to have any relationship, and was being in  
certain other's manner to get killed in her mind as that  
the defendant was told that he would be killed and that  
a further statement was the defendant in mind and later  
stated she did not want to discuss the papers he wanted  
at the defendant only that about January 1937, defendant  
called her, the defendant, the defendant and asked her how  
she wanted to express another relationship, Mr. Wilson,  
and he stated the statement that a few days later, the  
statement at the defendant's request, stated a letter with  
that that about a month afterwards she at the request of the  
defendant, that is the letter's name was not later told her  
that she was not killed but from to her the defendant; that  
the first was not a statement but, that was to her mother  
later, the witness again stated the defendant's name and  
was told by the defendant that later had been to her that  
that she told the witness she asked to write with details  
for a time and at other the mother's request she had been  
told that for 30 years since afterwards the defendant told  
her that she had mentioned an offer to be made to her to  
plaintiff \$10,000.00 or \$20,000.00 for a relationship, and that  
a divorce be obtained. The witness then replied that she

trust which had been executed by the defendant; that after the execution of the trust agreement, she saw the defendant and the latter told her that she was sorry that she had been induced to execute it. The witness then detailed a visit made with the defendant to another lawyer in an endeavor to have the trust agreement broken. She further testified that Arthur and the defendant seemed to be greatly displeased in regard to the witness' testimony and the defendant told her that the witness had been very untruthful; that the witness stated she had told the truth and further that she had been warned by some of her friends that the defendant would accuse her of telling something that was not true and that she be careful.

On cross-examination she testified that the defendant had told her she wanted to put her property in the hands of a Trust Company so that she could not revoke it and that Arthur would not be after her all the time to settle up his troubles; that she said Arthur wanted \$400,000.00 to make a settlement with his wife so that she might get a divorce from him<sup>and</sup> so that he might make a settlement with another man, whose wife he wanted to marry; that in the conversation she had with the defendant, at the latter's home, before Arthur went away, he was continually asking his mother for money, so that he could settle with his wife and have her get a divorce; that in these conversations in reference to settling with plaintiff, the alienation suit was spoken of; that Arthur and his mother said that they did not want any scandal or publicity; that if the alienation suit were tried, it would probably involve scandal; that the witness went with the defendant to see the





woman whom Arthur wanted to marry and requested her to leave Arthur alone; that about 1916, the defendant said she was in no way responsible for the separation of Arthur and his wife; that when the defendant and the witness went to see the other woman, the defendant did not tell the latter that she was the cause of the separation; that the woman did not agree to let Arthur alone; that there was very little said in her presence, but Arthur said he wanted to settle with the plaintiff and marry this other woman, who was living with her husband and her two daughters; that at one time Arthur threatened to do violence to himself, if his mother did not furnish him money to settle with his wife and the other woman's husband to prevent a scandal; that the defendant had asked her to come to see her because she wanted to tell the witness that her son had made up his mind to leave plaintiff; that he had not been happy with her; that she was not a woman of his class; that she would like very much to have her son separated from his wife and get a divorce; that defendant said that Arthur and his wife were not congenial; that there were no grounds for a divorce; that she knew nothing about the other woman for a long time; and when the witness went to the defendant in January, 1916, the defendant was not then being treated by her; that she was employed in 1914 to treat defendant's physical condition as a Christian Science practitioner; that she was later dismissed by the defendant who then employed another practitioner, who treated both the defendant and plaintiff; that the plaintiff was very nervous and could not sleep at night; that she treated the defendant all the time while the latter was away on the trip to Nassau; that at one time the defendant stated that



THE COURT: I have read the report of the committee on the subject of the proposed amendment to the constitution, and I am of opinion that it is not wise to adopt it. I have also read the report of the committee on the subject of the proposed amendment to the constitution, and I am of opinion that it is not wise to adopt it. I have also read the report of the committee on the subject of the proposed amendment to the constitution, and I am of opinion that it is not wise to adopt it.

plaintiff was blaming her for separating her from her husband, and that the latter was quite indignant at the accusation and stated that plaintiff was not in Arthur's class; that she was beneath him and that she did not approve of their marriage, and endorsed the separation; that the defendant told her that plaintiff's counsel stated that plaintiff would not accept less than \$50,000.00 in settlement of the alienation suit; that sometime before the defendant and Arthur went to Nassau, the defendant spoke about her son's danger of being arrested for wife abandonment, and that this together with the alienation suit might result in a big scandal if they got into court. She further testified that the lawyers got the letters that she had received from the defendant by subpoenaing her; that she brought all she had but probably had destroyed some of the letters; that she told counsel for the plaintiff in the alienation suit that she had been accused by the defendant of telling an untruth; that the penalty clause that Arthur wanted in case there should be a divorce, was to the effect that plaintiff be forbidden to mention any of his relations with her and that the defendant wanted the plaintiff in case of divorce to resume her maiden name; that in the interview she had with Mrs. Charnley, the latter had stated there was no question but that the defendant was guilty of alienating the affections of her son from plaintiff.

Mrs. Marian Adams called by the plaintiff, testified that in March, 1916, she put an Ad in the papers for employment as a housekeeper, as a result of which she was employed by the defendant in that capacity from two to three weeks; that during that time she talked with the defendant and one day handed her a letter that came from the Bahama





Islands and upon receiving it, defendant stated that it was from her son; that he was separated from his wife; that the witness stated "that is too bad" to which the defendant replied "don't say that is too bad. I do not want him to live with this woman because she is not his equal"; that the witness looked at the defendant and asked if the son was of age and the defendant replied that he was; that he had a very artistic temperament; that the woman he married was beneath him; a working girl; that she did not want him to live with her; that the witness said, "My, that is too bad"; that the defendant stated that she was a wealthy woman and for the witness to order anything that wanted for the house; that the witness left the employment of her own accord; that while she was there defendant referred to the plaintiff as "the creature" and stated that she did not like her looks and didn't want her son to live with her; that if he was divorced he could marry a woman that was his equal; that the witness asked if there was going to be a divorce and that the defendant replied she hoped so; that the witness then asked if Arthur's wife was a decent, respectable woman; that defendant said as far as she knew she was, but that she did wish they knew something about plaintiff's character; defendant stated she had plenty of money to keep her son away as long as he wanted to stay.

On cross-examination she testified that she did not know the plaintiff; that the first one she talked with about the case was when the man served her with the subpoena; that she did not know how anyone found out that she knew anything about the case. She further testified that one time,



[illegible]

On November 19, 1968, the following information was received from the [redacted] regarding the [redacted] who had been arrested on November 19, 1968.

which was apparently several years prior to the time she was testifying, some one at the Edgewater Beach Hotel pointed out plaintiff to her and stated that that was the lady whose husband had ran away from her; that he did not want to support her; that he was a mother's boy; one of those rich fellows that did not want to work.

Nabel F. Wallace called by the plaintiff, testified that she was the defendant's adopted daughter; that she lived at home until she was married in 1907; that at one time she had a talk with her mother in reference to plaintiff's suit and the latter stated that she thought it was very unjust and that it was blackmail; that it should be settled as she did not want to worry over it any longer.

Harold H. Rockwell, Secretary of the Northern Trust Company of Chicago, testified in reference to the trust agreement made by the defendant, and the agreement was offered in evidence by plaintiff. By the terms of the trust, defendant's property was turned over to a trustee. There were certain provisions made for Arthur and it was expressly provided that such provisions should be null and of no effect if he should marry Mrs. Edith S. Schariff. She being the married woman above referred to whom Arthur wanted to marry. It was agreed that defendant's estate disposed of by the agreement was worth at least \$750,000.00, and was liable for any judgment that plaintiff might obtain in the case.

Dr. William G. Stearns was called by the plaintiff and testified that he specialized in nervous and mental diseases; that he treated the defendant from 1909 to 1913; that





the latter often referred to her son Arthur; that she said she was sorry for Arthur on account of lack of harmony between him and his wife; that she was dissatisfied with Arthur's wife; that she referred to plaintiff in a sarcastic and contemptuous manner.

On cross-examination he testified that he also saw defendant's husband who has since died; that he was physically feeble and mentally deranged; that when he treated the defendant in the rest cure in Evanston, she was very much depressed, melancholy, worried, uncomfortable and more or less hopeless; that she complained about sleeplessness, nervousness and restlessness and her husband's mental condition.

Gera B. Noyes, testified for the plaintiff, that she knew the defendant through Dr. Stearns; that she acted as a companion to the defendant from September 1910 to April 1911; that during that time, the defendant stated she did not like her daughter-in-law; that the witness asked her if there were any women she would like for her daughter-in-law and that the defendant replied in the affirmative; that the defendant was at the rest cure in Evanston one week; that at one time she invited Arthur to go with her to the opera, but did not invite plaintiff. On another occasion the defendant again took her son and another relation to some entertainment, but did not invite plaintiff; that at one time the witness offered to help plaintiff in making some curtains and the defendant objected to this.

On cross-examination she testified that she had a great many conversations with the defendant about the plain-



the father often referred to her own father, that she was  
the only one for whom he showed an interest in her  
town and his wife that she was interested in  
her father's life; that she referred to him in a  
and her father's name.

In the course of the investigation it was found that in the  
new defendant's husband who has since died; that he was  
physically feeble and mentally damaged; that when he was  
the defendant in the case in question, she was very much  
dependent, financially, morally, and otherwise, and was in  
fact dependent; that she was dependent upon him for  
maintenance and well-being and her husband's name was  
always

John H. Brown, testified for the defendant, that  
she knew the defendant through Mr. Brown; that she knew he  
was dependent on the defendant from September 1915 to April 1917  
that during that time, the defendant visited him and that  
she brought up to him that the witness knew him in 1915 when  
she knew she would like her daughter-in-law and that the  
defendant replied in the affirmative; that the defendant was  
at the time in question was very ill and that she  
invited him to go with her to the court, but he did not  
also testify. He further testified that the defendant again took  
her own and another witness to the court, but he  
was never present; that at the time the witness visited  
he fully testified to making some inquiries and the defendant  
appeared to him.

tiff. Sometimes the defendant had one attitude and sometimes a different one toward the plaintiff, but that the relations between the plaintiff and defendant were "constrained."

Plaintiff also introduced in evidence ten letters written by the defendant to her son Arthur after his marriage and while he was still living with plaintiff; they having been obtained by plaintiff and produced by her on the trial. They are of a personal nature, but there is nothing in them to indicate that the mother wanted Arthur to leave his wife. It is apparent that the mother was not pleased with the marriage. In them she speaks about sending them some things to be used by Arthur and his wife in housekeeping. She writes about Arthur's father's physical and mental condition and of the fact that he is unable to attend to business and suggested that Arthur return to Chicago to take charge of it.

Plaintiff testified in her own behalf; that she first met the defendant in 1904 at Denver and that on the 19th of the following October, she was married at that place to Arthur; that they lived in Denver for a number of years after their marriage, her husband being engaged in business there, returning to Chicago about 1910; that her husband was very devoted to her until about the year 1913; that Arthur's father and mother visited them at Denver in the spring of 1906, where they remained several days stopping at a hotel; that in December, 1904, plaintiff had occasion to come to Chicago and called on the defendant at her residence in Michigan avenue; that she and her husband rented an apartment, and that the defendant sent them some furniture; that the defendant and her husband again visited them in the fall



1917. Although the defendant had not received any communication  
a subpoena was issued for the defendant, but that the defendant  
between the plaintiff and defendant were "unlawful."

Plaintiff also introduced in evidence the letters  
received by the defendant in her own name after the marriage  
and while he was still living with (plaintiff) from various persons  
obtained by plaintiff and produced by her on the stand. They  
are of a personal nature. But there is nothing in them to  
indicate that the writer wanted to have the wife. It  
is apparent that the writer was not pleased with the marriage.  
In these the writer is writing that some things are to be  
by letter and his wife is complaining. The writer also  
states that the writer's physical and mental condition was at the  
fact that he is unable to attend to business and is suffering  
that the writer is suffering from some disease of the

Plaintiff testified in her own behalf; that she  
first met the defendant in 1914 at New York and that on the  
first of the following October, she was married at that place  
in person. That they lived in New York for a number of years  
after their marriage, but because of some reasons in relation  
there, returning to Chicago about 1917, but not married  
and very devoted to her until about the year 1918, that  
defendant's father and mother visited them at New York in the  
spring of 1918, when they visited several days and during  
the month of June in December, 1918, plaintiff and defendant  
were in Chicago and called on the defendant at her residence  
in Chicago evening that she had defendant visited in Chicago

of 1907 for about a week and that during that visit they played cards and the defendant addressed the plaintiff as "she", "it" or "her"; that they attended a theatre once when the defendant's conduct toward the plaintiff was quite unfriendly; that the defendant and her husband again called on them at Denver in 1908, when the plaintiff was temporarily away from Denver in the east and on her return to Denver she stopped at Chicago and called upon the defendant when the latter told her that while she was in Denver, she and Arthur had selected an apartment in Denver where plaintiff and her husband were to live. The plaintiff then details other times that she and her husband came to Chicago and that at one time she heard the defendant say to Arthur that plaintiff was "impossible" that she did not like her; that in 1910 plaintiff and her husband moved to Evanston and lived about a block from the defendant; that the latter never invited her to come to her house there; that the defendant's husband died in March, 1913; that in January, 1911 when plaintiff was in Chicago she went to see the defendant in an endeavor to bring about an harmonious condition in the family; that at that time the defendant stated the unpleasantness in the family would never have existed, if plaintiff had not come into the family. The witness then detailed other matters which indicated that the mother-in-law was not friendly towards her; that the defendant was in poor health and was at various hospitals, both in Chicago and Philadelphia; that while the defendant was at the latter place, Arthur's father lived with plaintiff at their home until he died. She further testified that Arthur stayed away from home more than formerly and left her June 5, 1915; that they were then living in





Evanston and she continued to occupy the premises until September, 1915; that plaintiff saw the defendant on April 15, 1915, and spoke to her about Arthur getting a divorce; that the defendant said that she did not see how she could help matters; that she asked plaintiff if she did not think it was a good plan for plaintiff and Arthur to go to California to get Arthur away from certain influences, to which plaintiff replied in the negative; that during the time she lived with Arthur as his wife she had charge accounts in all of the large stores in Chicago, but that these were discontinued in 1915, when Arthur wrote the trades people that he would not be responsible any longer.

On cross-examination she made reference to the fact that she had testified in a separate maintenance suit which she brought against Arthur. She further testified that she did not know why the defendant disapproved of her; that defendant's conduct toward plaintiff was, most of the time, patronizing; that in September, 1915, which was more than two years after the instant case was begun, the defendant met her at the Palmer House at plaintiff's request and that she told the defendant that something should be done whereby plaintiff could be taken care of; that the defendant stated Arthur blamed her for everything, to which plaintiff replied that she thought Arthur was correct, otherwise she would have never brought the instant case against the defendant; that the defendant stated that her business affairs were in such shape, on account of the trust agreement, that she could do nothing with her income but spend it on herself. The witness then testified to various other meetings with the defendant, most





of which were unpleasant; that she had a conversation with the defendant upon her return from Europe in the defendant's home concerning Arthur; that the defendant asked her if she had not noticed a great change in Arthur; that she said she had. The defendant asked her what it was about and the plaintiff replied she could not talk about it. She further testified that she knew Mrs. Scharff was not the cause of the change in Arthur's conduct; that she introduced Arthur to Mrs. Scharff in 1914, at a dancing class to which they belonged; that it was their practice after the dances to meet at the members' homes and that two of such meetings were held at Mrs. Scharff's home; that the witness gave an entertainment but did not invite Mrs. Scharff; that she told her husband that she left Mrs. Scharff out because there had been a great deal of gossip about her actions with men in the club; that there was no more talk about Arthur than with the others; that she did not complain of Mrs. Scharff's conduct with Arthur any more than about her conduct with the other men; that Mrs. Scharff was the woman named in the trust agreement made by the defendant; that she first learned in July, 1913, that Arthur was enamored of Mrs. Scharff; that she had several conversations with the defendant between Christmas, 1914, and April, 1915; that in March, 1915, she had a conversation at which her husband was present about the renewal of a lease on the house in which they lived; that Arthur stated he was not going to renew the lease; he was going to get a divorce; that defendant then requested Arthur to go to an attorney's office and they would see what could be done; that the defendant said to plaintiff, you know your marriage was irregular and I was



at which were employed; that he had a conversation with the  
 defendant upon her return from Europe in the defendant's home  
 concerning a return, that the defendant asked her if she had not  
 visited a great number in England that she had had, the  
 defendant asked her what it was about and the plaintiff replied  
 she would not tell about it. The plaintiff testified that she  
 knew that defendant was not the owner of the house at 1110  
 street; that she understood a letter to her, dated in 1917,  
 at a house close to 1110 1/2 street; that it was there  
 that she saw the house in 1917 at 1110 1/2 street; that she  
 that one of such meetings were held at Mrs. Gault's house  
 that the witness gave an explanation for it, not having  
 Mrs. Gault; that she told her husband that she had seen  
 Gault and because there had been a great deal of gossip  
 about her relations with one in the city that there was no  
 more than a few years from then the witness told the jury  
 the contents of Mrs. Gault's account with other and was  
 then about the witness with the other way that Mrs. Gault was  
 the woman named in the first account made by the defendant  
 that she had learned in 1917, 1918, that there was a woman  
 at Mrs. Gault's house and had several conversations with her  
 defendant between December, 1917, and April, 1918, was in  
 1917, 1918, she had a conversation with Mrs. Gault  
 was present about the removal of a house on the street in  
 which they lived; that Gault asked her not to come to  
 know the house; he was going to get a divorce; that she  
 learned that defendant asked her to be an attorney, or rather

never happy about it, and neither was Arthur. The plaintiff testified that she found letters, some of which were offered in evidence by her, written by the defendant to Arthur; that she had destroyed a great many of them, but had not done so for the purpose of suppressing evidence.

She further testified that at the meeting with the defendant in the Palmer House in September, 1918, defendant asked her to come alone, but that she took Mrs. Davidson, her Christian Science Practitioner with her, who had been in the court room every day during the trial. Plaintiff then testified on further cross-examination that she went to Denver in April, 1904, to be married to Arthur; that she did not live with Arthur before they were married, but did have improper relations with him during that period. This was brought out over objections of counsel for plaintiff. The witness then, over objection, was required to state where she lived for three or four years prior to the time she was married.

There was also offered in evidence seven letters from the defendant to Arthur, but they have no probative force so far as the instant case is concerned.

Harriet L. Davidson, testified for the plaintiff, concerning the conversation had between plaintiff and the defendant at the Palmer House in September, 1918, to which we have referred, at which time plaintiff requested that something be done whereby she would be taken care of, and the defendant replied she could do nothing and that Arthur could do nothing as he had only what was given to him by the defendant.



never happy about it, and neither was Arthur. The President  
believed that the loud laughter, some of which were uttered  
in response to him, uttered by the defendant in answer to  
him had destroyed a great many of them, but that none of  
the the purpose of preventing evidence.

The further testified that on the morning of the  
testimony in the witness stand in December, 1903, defendant  
asked her to come along, but that she did not. Defendant, but  
defendant believed that she was not, and that she was in the  
court room every day during the trial. Defendant told her  
that on further cross-examination that she was not in the  
court, 1903, as he wanted to know that she did not say  
that further before they were married, and that they had  
evidence that she was during that period. This was brought out  
over objection of counsel for defendant. The witness then,  
over objection, was required to state when she lived the  
house on that point before in the case was settled.

There was also elicited in evidence some letters  
from the defendant to Arthur, but they were not produced  
before he was on the witness stand in December.

Witness J. testified, elicited the the possibility  
concerning the investigation and between plaintiff and the  
defendant at the time when in December, 1903, he was  
at home, at which time plaintiff requested that  
witness be made ready and would be taken into it, and  
the defendant testified that he would be willing and that Arthur

The foregoing was substantially all the evidence offered on behalf of the plaintiff.

The defendant offered in evidence seven letters written by her to her son before the marriage and dated May 11th, July 6th, August 9th, August 18th, September 20th and October 2th and 31st, 1904. In the first of these it is said, among other things, "I do not see how I can ever be reconciled to your marriage to any woman whom we know to be far your inferior \* \* \* my pride will not let me be reconciled to her or her family" and advises against the marriage. In the second, the defendant writes that Arthur's father needs him in his business and "I shall feel that you are surely lost to me, if you marry her, and it is a serious question as to where your duty lies." The third letter is to the effect that Arthur's father is failing rapidly and that Arthur should return home. In the fourth the defendant states she cannot get over Arthur's connection with plaintiff and advises him not to marry her because she was not his equal in family, education or refinement. In the sixth she again writes plaintiff that she cannot feel that his marriage with plaintiff would be happy; that it would be a cloud on his life and on his parents' life; that his father, too, feels keenly about the matter. She also requested that plaintiff come and talk with her. In the seventh letter she writes to the effect that Arthur has not been frank with her in reference to plaintiff's previous life; that she and Arthur's father agreed that it would be best not to send out any announcement cards.

Anna B. Johnson, called by defendant testified that





she was employed as a companion for the defendant from August 31, 1913, until May 11, 1914. She was again employed beginning January 1, 1917, in a like capacity and continuously since; that she had seen plaintiff in defendant's home many times and that the two women seemed to be friendly; that the witness had a conversation with plaintiff December 31, 1916, at which time she asked plaintiff if she did not think it was possible for plaintiff and her husband to again live together; that plaintiff replied that she did not want her husband and he did not want her; that there was another woman in the case, who was married, had two children and lived in Evanston.

The defendant testified in her own behalf that she was 71 years old; that in September, 1918, she met plaintiff at the latter's request at the Palmer House; that plaintiff asked her what she was going to do towards her support; that she had received no money since June, to which the defendant replied that she had put her affairs in trust with the Northern Trust Company and was powerless to do anything; that she afterwards conferred with her counsel who advised her that it was Arthur's duty to support plaintiff and not the defendant's. The defendant testified that she first met the plaintiff in the spring of 1904 at Denver. She then over objection of plaintiff, detailed the conversation she had there with her husband and her son Arthur out of the presence of plaintiff; that at that time Arthur told her that he had met plaintiff in 1899 and was going to marry her; that he then gave various places in Chicago where plaintiff had lived and stated that plaintiff had told him that she had been betrayed by a





man named Hart with whom she had lived nine months; that Arthur further stated that plaintiff was the cause of the defendant and her husband's worry for several years past. The admission of this testimony was obviously highly improper. Defendant further testified that she was introduced by Arthur to plaintiff and that Arthur said that plaintiff was a widow and, over objections, she testified that she never advised Arthur to leave his wife or to get a divorce; that she paid plaintiff \$300.00 per month. The witness then denied substantially all the testimony given by Mrs. Dudley as to what the defendant had said to Mrs. Dudley about plaintiff. She also denied in toto the testimony given by Marian Adams and said that she did not recall this witness at all. She further denied that she told plaintiff that she would talk to Arthur and see what could be done about a divorce, and testified that she had never talked to anybody about a divorce; that plaintiff came to her house before the separation and told her Arthur was infatuated with a married woman who had two children and lived in Evanston; that she went to see the latter with Mrs. Dudley after the separation and told her she did not sanction her son's intimacy with her; that her son wanted \$300,000.00 so that he could separate from his wife and marry Mrs. Scharff and that she refused to give him the money. She further testified that three or four years before Arthur was married, he had been staying out a great deal at night; that she loaned him \$10,000.00 to go into business in Denver; that when plaintiff and Arthur returned to Chicago in 1910, they lived about a block from the defendant and her husband, and the plaintiff called almost daily at her home. A telegram was offered in evidence from plaintiff to defendant, dated May 15, 1914,



and named that with whom he lived since marriage; that he was  
further stated that plaintiff was the owner of the defendant  
and had received a copy for several years past. The defendant  
at the testimony of plaintiff, highly improper, threatened the  
that testified that she was threatened to return to plaintiff  
and that before this that plaintiff was a white lady, very elegant  
fines, she testified that she never received a letter or money  
she also as to get a divorce, that she paid plaintiff \$100.00  
for money. The witness then stated substantially all the above-  
stated given by her. Plaintiff as to what the defendant had said  
to her. Plaintiff stated plaintiff. She also stated in 1910 she  
testimony given by witness above and said that she did not see  
all this witness as all. The witness stated that she said  
plaintiff that she would call in morning and see what would be  
done about a divorce, and testified that she had never raised  
in money about a divorce; that plaintiff never in her home  
before the separation and told her father was interested with  
a married woman who had two children and lived in Germany;  
that she went to see the father with her. Plaintiff after the  
separation and told her she did not mention her name in  
any of the way; that she was named plaintiff, but as to that she  
would separate from his life and marry Mrs. Plaintiff and that  
she refused to give him the money. The witness testified that  
three or four years before father was married, he had been  
married and a girl that is called that the female life  
EIO, and as to the witness in Germany that when plaintiff  
and father returned to Chicago in 1910, they lived about  
a block from the defendant and her husband, and the plaintiff

in which plaintiff wished the defendant a pleasant voyage to Europe.

On cross-examination the defendant testified that she went to see Mrs. Scharff twice, once with Mrs. Dudley, and told her she did not approve of the intimacy between Mrs. Scharff and her son; that Arthur has lived at the same hotel where she lives since the summer of 1919. Some other testimony was offered on behalf of the defendant, but we think it unnecessary to refer to it.

In rebuttal Edith Dudley testified for plaintiff that she heard the defendant say to Mrs. Scharff that she and Arthur should have kept apart until a divorce was obtained. This is substantially all the evidence in the record.

Counsel for plaintiff contends: (1) that the court erred in excluding letters written by Arthur to his wife and offered on behalf of the plaintiff. These letters were offered to show that there was great affection between Arthur and his wife. A number of authorities are referred to by counsel as sustaining plaintiff's contention that they were admissible. No Illinois case, however, sustains plaintiff in this respect and we think they were inadmissible under the statute, sec. 5, chap. 51, R.S. That statute after specifying, among other things, when a husband and wife may testify for or against each other, provides "that nothing in this section contained shall be construed to authorize or permit any such husband or wife to testify to any admissions or conversations of the other, whether made by him to her or by her to him, or by either to third persons except in suits or causes between





such husband and wife." We think the letters might be considered in the nature of an admission made by the husband to his wife, and are barred by the statute. See also Dennan v. Dennan, 236 Ill. 341; Goetz v. Goetz, 157 Ill. 33; Joiner v. Duncan, 174 Ill. 282. Moreover, we think the letters were inadmissible because the last one of them was written more than six years before plaintiff and her husband separated, and there was no contention but that plaintiff and his wife were very affectionate towards each other until a short time before the separation, but on the contrary, this fact seems to have been conceded by all.

2. The defendant further contends that the court erred in instructing the jury, at the request of defendant, to the effect that no recovery could be had by plaintiff for the alienation of the affections of Arthur, unless such alienation was caused solely by the defendant. We think this point is well taken, because if the separation would not have occurred but for the acts of the defendant, she would be liable, although some other fact concurred in bringing about such separation. The act complained of was a tort, and all joint tort feasons are jointly and severally liable.

3. At the defendant's request, the court instructed the jury that plaintiff was not entitled to recover if the defendant alienated the affections of Arthur from plaintiff "at any time prior to five years before you may find from the evidence the affections of said John Arthur Farwell were alienated from the plaintiff, and unless you believe from the preponderance of the evidence that defendant maliciously alienated the affections of plaintiff's husband from her at some period within five



and the fact that the defendant was not a resident of the State of New York at the time of the commission of the crime, the court held that the defendant was not subject to the jurisdiction of the court.

1. The following further appears from the report  
 2. In investigating the facts, at the request of the  
 3. In the report that in January 1904, the following was  
 4. The statement of the statement of the statement of the  
 5. It was stated that by the statement of the statement of the  
 6. In the report, however, it is stated that the statement of the  
 7. In the report of the statement of the statement of the  
 8. In the report of the statement of the statement of the  
 9. In the report of the statement of the statement of the  
 10. In the report of the statement of the statement of the

1. At the defendant's request, the court instructed the jury that the defendant was not entitled to a verdict if the jury believed the evidence of the defendant's guilt was sufficient to sustain the charge.

years before the same were alienated, if they were alienated, your verdict should be for the defendant." Plaintiff contends that this instruction was erroneous, ambiguous, misleading and unintelligible. We think the contention must be sustained. The undisputed fact is that the separation took place June 15, 1915, and the instant case was begun March 3, 1916. The jury should have been instructed as plaintiff requested, that the Statute of Limitations had nothing to do with the case.

4. Plaintiff further contends that the court erred in giving instructions No. 23 and 25, at the request of the defendant. Instruction 23 was to the effect that the defendant was under no obligation to her son or to plaintiff to settle any claim of the plaintiff which she might have against her husband for support or maintenance, and that the defendant had the right to place her property in trust where it could not be reached for any such purposes. By instruction 25 the jury were told that except as against defendant's creditors or any person or persons who might recover a judgment against her, she had a right to dispose of all of her property so that neither Arthur nor plaintiff could receive any part of it. While instructions 23 and 25 might not be entirely accurate, we think there was no substantial error in giving them, because there was considerable evidence that plaintiff was demanding money from the defendant for her support and also that defendant had been paying the plaintiff in this respect.

5. Complaint is also made of the giving of certain mandatory instructions on behalf of the defendant, instruc-



years before the same were alienated, if they were alienated, your verdict should be for the defendant. Plaintiff complains that this investigation was extensive, prolonged, distracting and unproductive. He claims the consideration given to the claim. The undisputed fact is that the investigation took place June 18, 1938, and the instant case was begun March 23, 1940. The jury should have been instructed as plaintiff requested. That the estate of defendant had nothing to do with the case.

4. Plaintiff further complains that the court erred in giving instructions No. 11 and 12, as the request of the defendant. Instruction 11 was to the effect that the defendant was under no obligation to pay out as to plaintiff in settling any claim of the plaintiff which she might have against her husband the subject of intestacy, and that the defendant had the right to claim her property in kind when it would not be required for any such purpose. By instruction 12 the jury were told that money as against defendant's estate to pay debts at payment of rights to her a large sum against her, she had a right to disown all of her property as that neither brother nor plaintiff could receive any part of it. While instruction 11 and 12 might not be entirely accurate, we think there was no substantial error in giving them, because there was considerable evidence that plaintiff was demanding money from the defendant for her support and also that defendant had been paying the plaintiff in 1938 support.

ting the jury that in case they find certain facts, then they should find defendant not guilty. While there was considerable repetition in this respect, we think we would not be warranted in holding that it amounted to serious error.

6. The defendant also complains that the court erred in instructing the jury to the effect that the defendant might advise her son in regard to his marital relations; that in such case the law presumes good faith on the part of the defendant and that the advice was for the benefit of her son; that if they believed from the evidence that the defendant advised the son to separate from the plaintiff, that she had a right to do so, if what she did was in good faith; and what she believed to be for the best interest of Arthur, and that plaintiff could not recover on account of such advice unless the jury believed from a preponderance of the evidence that defendant was not acting in good faith, but was actuated by malice toward plaintiff. We think instructions of this character were wrong. While plaintiff being the mother of Arthur had the right to advise him in reference to his marital relations (her right being greater than that of a stranger) yet under the evidence in the instant case she had no legal right to advise her son to leave plaintiff. The instructions should not have been given. Gochrane v. Gochrane, 127 N.Y. App. Div. 319; Cooper v. Cooper, 102 Kans. 378.

Other points are made by the plaintiff as to why the judgment should be reversed, but in the view we take of the case, it is unnecessary to pass upon them, because we are clearly of the opinion that upon consideration of all the evi-





dence in the record, including that which was excluded, that no verdict could stand except one for the defendant. We are in entire agreement with the trial judge, who stated in overruling plaintiff's motion for a new trial, "the verdict was right and no other verdict could have been sustained." There is no evidence that would warrant a finding to the effect that Arthur left his wife on account of anything being done by the defendant. It is true that the defendant did not like her daughter-in-law and that she so stated on numerous occasions, both orally and in writing and that she opposed the marriage is undisputed. The defendant wrote a great many letters to her son and others covering a period from the early part of 1904 before the marriage until long after the separation, which took place in June, 1915, and long after the instant case had been pending, and it is significant that in none of these letters is there anything said to the effect that the defendant advised or encouraged her son to separate from his wife. On the contrary, we think the evidence discloses the fact that the principal reason for the son leaving his wife was on account of the other woman in the case. Notwithstanding, the errors which we are of the opinion the record contains, we are further of the opinion, we would not be warranted in disturbing the judgment. It is apparent that plaintiff could not recover in any event. People v. Mainia, 276 Ill. 363.

The judgment of the Circuit Court of Cook County is affirmed.

AFFIRMED.

THOMSON, J. AND TAYLOR, J. CONCUR.



known in the record, including that which was excluded,  
that no verbatim copies were made of the testimony.  
It was in further agreement with the court judge, who agreed  
in overruling the motion for a new trial, that the verbatim  
was right and no other verbatim could have been made.  
There is no evidence that would support a finding to the  
effect that the father felt the wife was untruthful in reporting  
being born by the father. It is true that the father  
did not like her daughter-in-law and that she was not of good  
character, but this does not mean that he was willing to let her  
marry his son. The father is well known. The father with a  
good wife, father to her son and others, married a good  
wife the early part of 1900 before the marriage was final.  
After the separation, which took place in 1901, 1902, and  
long after the husband was not seen again, and it is  
evident that in none of these letters is there anything  
said to the effect that the husband should be encouraged  
but now he separates from his wife. On the contrary, we  
think the evidence shows the fact that the husband  
separated from the son leaving his wife and on account  
the other woman is not more. Referring to the other side  
as well as the father the court should, we are further of  
the opinion, we would not be surprised in discovering the  
fact. It is apparent that the father could not remove in any  
event. People v. ... 1901, 1902.

The judgment of the court is hereby affirmed.  
in affirm.

33 - 26670

THE PEOPLE OF THE STATE OF ILLINOIS,

Defendant in Error,

v.

FRANK KRISAN,

Plaintiff in Error.

38792  
234 I.A. 638

ERROR TO

CRIMINAL COURT,

COOK COUNTY.

Opinion filed June 25, 1924.

MR. JUSTICE TAYLOR delivered the opinion of the court.

The defendant, Krisan, was indicted as keeper of a gaming house, tried by court and jury and found guilty and fined \$100.00.

The evidence in the case consists of the testimony of two police officers. One Aldenhovel testified that on June 18, 1921, about 11:30 p.m. he went to 37 West 22nd street, a pool room; that the defendant was "standing on the inside at the front door next to the cigar counter;" that he, the witness, went upstairs where there was a pool table and about thirty men shooting craps; that he gathered up some dice, money, and gambling paraphernalia and, together with four other officers, arrested twenty-two men; that a patrol wagon was called and the prisoners put in; that the defendant, when getting in, being the last one, said, "Why don't you leave somebody in charge here? If you are going to take us all leave somebody here."

The testimony of Suhach, the other police officer, is that he was present at the time and place in question; that he and four other officers went in and then upstairs, and



2341 A. 632

THE OFFICE OF THE ATTORNEY GENERAL

WASHINGTON, D. C.

RECEIVED

DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

UNITED STATES

DEPARTMENT OF JUSTICE

Opinion filed June 28, 1934.

THE UNITED STATES DEPARTMENT OF JUSTICE

WASHINGTON, D. C.

The following, which, was received at the office of the Attorney General, dated June 28, 1934, and is hereby published for the information of the public.

UNITED STATES

The following is the substance of the testimony

of the witness, who, after being sworn, testified that on June

16, 1934, about 11:30 a.m. he went to the office of the

Attorney General and saw the following persons standing on the steps of

the front door: Mr. J. Edgar Hoover, Mr. Clegg, Mr. Glavin, Mr. Ladd,

and Mr. Nichols. There were a great many other persons standing

about the steps, but he did not know their names, and he

did not know whether they were going in or out of the building.

He testified that he saw a man who was wearing a dark suit and

who was walking toward the building, and that he saw a man who

was walking away from the building, and that he saw a man who

was walking toward the building, and that he saw a man who

was walking away from the building, and that he saw a man who

that he saw a pool table and about eighteen men around it; that there was a lot of silver money on the pool table, which officer Lang took, along with a bag which was there, and that he and the other officers placed the men under arrest and called the patrol wagon.

It is contended for the defendant that the evidence is insufficient to sustain the verdict. It is very meager. It shows that the defendant was "standing on the inside of the front door at a cigar counter," "standing on the inside of the front door next to the cigar counter," "standing at the cigar counter inside of the door all alone," in his shirt sleeves. That is all the evidence put in to show that he "unlawfully did keep and maintain a certain common gaming house for gain and lucre." It is true that there was sufficient evidence to show that there was illegal gaming going on upstairs, but the only evidence that the defendant kept and maintained the place is what has been stated. That seems to be insufficient. It gives rise to suspicion, but it is not proof beyond a reasonable doubt. The case of Robbins v. The People, 95 Ill. 175, is not in point. In that case, where there was an indictment for keeping a common gaming house, the evidence proved that the accused took part in the gambling, dealt the cards, had charge of the rooms, and that whenever any questions arose about the games being played, all disputes were referred to him for settlement. In the instant case the evidence merely shows the defendant was present on the premises, and that after he was arrested, and was being put into the patrol wagon - the last one to enter - he said, "Why don't you leave somebody here in charge? If you are going to take us all leave somebody here."



that he saw a good woman and about fifteen or twenty men.  
That there was a lot of silver money on the road, which  
without being lost, also with a bag which was there, and that  
he and the other witnesses placed the bag under a tree and  
called the patrol wagon.

It is understood for the reasons that the witness  
is unwilling to make the report. It is very much  
it shows that the following statements are made by the  
There were a large number of witnesses on the inside of  
the front door was in the right corner, standing at the  
right corner inside of the front door, in the right  
corner. That is all the witness has to say that he  
"definitely did keep and maintain a certain amount of  
money for gain and loss." It is true that there was a witness  
witness to show that there was a large amount of money  
but the only witness that the witness says and understood  
the view is that he was asked. That was the only  
corner. It gives rise to suspicion, but it is not a very  
a reasonable doubt. The case of *Robinson v. The People*, 101  
101, is not in point. In that case, where there was an injury  
and the money was a certain amount of money. The witness says  
that the amount was left in the building, and the money  
and money of the money, and that however any possible error  
about the money being kept, all amounts were related to  
the fact of the money. In the building where the witness was  
where the witness was present on the premises, and that where  
he was arrested, and was taken into the patrol wagon - the

In Stevens v. The People, 87 Ill. 587, which involved an indictment for keeping a common gaming house, and where the question arose as to the insufficiency of the proof that the accused was guilty of keeping such a house, and the evidence showed that it was stipulated that a certain witness, if present, would testify that the accused "at the time of the arrest was only engaged in dealing the cards," the court said, "All persons who aid, abet or assist in the commission of a misdemeanor, are guilty as principals." And further, "He (the defendant) appeared, from the evidence, to be the one in charge of the room, and, in our judgment the evidence fully justified the jury in finding that he had the superintendence and charge of the same." Ward v. The People, 23 Ill. App. 511, is not in point, as in that case, it was admitted that the accused occupied and controlled the building in question.

Giving all the evidence full weight, we are of the opinion that it obviously failed to prove beyond a reasonable doubt that the defendant was the keeper of a gaming house. The judgment will, therefore, be reversed.

REVERSED.

O'CONNOR, P.J. AND THOMSON, J. CONCUR.



—and the other, the "other" side of the coin.

The first of these is the fact that the
 evidence is not in the form of a
 written statement, but is in the form
 of a verbal statement. This is a
 disadvantage, because it is not
 possible to check the accuracy of the
 statement. The second is the fact
 that the evidence is not in the form
 of a written statement, but is in the
 form of a verbal statement. This is
 a disadvantage, because it is not
 possible to check the accuracy of the
 statement. The third is the fact
 that the evidence is not in the form
 of a written statement, but is in the
 form of a verbal statement. This is
 a disadvantage, because it is not
 possible to check the accuracy of the
 statement.

The document will, therefore, be returned.

51 - 28899

EL COMERCIO PUBLISHING CO.,  
a corp.,

Appellee,

v.

R. A. MATHEWS ADVERTISING  
CORPORATION, a corp.,

Appellant.

3880a

234 I.A. 639

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed June 25, 1924.

MR. JUSTICE WAYLON delivered the opinion of  
the court.

The plaintiff brought suit in the Municipal Court  
against the defendant for certain advertising which it claimed  
it had furnished upon the order of the defendant. There was  
a trial by the court, with a jury, and a verdict and judgment  
in favor of the plaintiff in the sum of \$322.50. This appeal  
is therefore, so brief has been filed for the plaintiff.

The plaintiff published a periodical in Spanish  
called "El Comercio," a publication used as an export medium  
circulating in South America. One Schaeffer, western advertis-  
ing manager for the plaintiff, stated that he called on the  
defendant and obtained a written order for advertising, and sent  
it on to the New York Office for the sanction of the plaintiff.  
That order was offered in evidence. It is dated May 18, 1921,  
and purports to be signed by the defendant, by S. E. Peterson.  
The business of the defendant was to solicit and prepare, buy  
and sell advertising. One of the customers of the defendant was  
the Pioneer Corporation. S. E. Peterson was a salesman for the  
defendant, and empowered to sign orders. The order of May 18,



1992 = 10

3341.633

1

Opinion filed June 25, 1934.

THE UNIVERSITY OF CHICAGO PRESS

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

THE ALABAMA POWER CO. v. THE UNITED STATES

[illegible]

1921, directed to the plaintiff, and given by the defendant, recited that the paper was El Comercio, that the advertiser was the Pioneer Corporation; that the space was one half page to be published 12 times, monthly, beginning with June 1921. It requested that four proofs of the advertisement should be sent as soon as set up. It, also, contained, in typewriting, the following: "Not subject to cancellation without consent of El Comercio Publ. Co.;" and in the printed form, "Privilege to discontinue on due notice." Also, "Copy instructions will be furnished you from month to month. \* \* \* Please acknowledge this order. \* \* \* Payable, monthly, \$20.00 per inser'n less com."

The advertisement was first published by the plaintiff in the July 1921 number. It was continued monthly through and including March 1922, making in all nine publications. The defendant paid for the first six months, but refused to pay for the three succeeding, those of January, February, and March, 1922. The plaintiff's charge, according to the order was \$20.00 a month, with a discount of 15%. Three months, at \$20.00 each, with 15% off, amounts to \$322.50, which was the amount of the verdict and judgment.

(1) It is claimed that the plaintiff was bound to show not only that Peterson, who signed the defendant's order, was an agent of the defendant, but that he had authority to insert the non-cancellation clause. The testimony of Peterson is that he was the business advertising solicitor for the defendant; and the testimony of R. A. Mathews, secretary and treasurer of the defendant is that Peterson was empowered to sign such orders, and that the order in question was signed by Peterson.





Further, certain correspondence in evidence shows that the order as signed was acted upon, advertisements published pursuant to it, and certain payments made for such advertisement. This contention is, therefore, not tenable. There is nothing in Baltz v. Huston, 33 Ill. App. 573 to the contrary.

(2) As to the words, "Not subject to cancellation without consent of El Comercio Publ. Co.," they appear typewritten, just above the printed words of the bank. The printed words, which are "Privilege to discontinue on due notice," are obviously superceded by the typewritten words. Counsel argue that as the printed are inconsistent with the typewritten words, the plaintiff was put on notice as to the lack of authority on the part of Peterson. But the evidence shows Peterson had authority to make such an order, and, apparently, authority also, to try to cancel such an order, for on December 13, 1931, he wrote to the plaintiff requesting it to cancel the Pioneer advertising, giving as a reason, not that he lacked authority to make an order, but that "Results from the advertising in El Comercio have been very disappointing so that we cannot consistently think of using the paper any more, at least at this time." That was after the order given on May 18, 1931, had been acted on by the plaintiff for at least five months. In National Fire Ins. Co. v. Lumber Co., 235 Ill. 98, the one dealing with the agent had notice of the limitation of the latter's authority and so was bound. That is not the situation here.

(3) It is claimed that the court erred in not allowing the defendant to introduce evidence to show that Peterson was wholly without authority to execute the alleged order.





As a matter of fact, the evidence shows not only that the order was properly authorized by the defendant, but was acted upon by it for at least five or six months, and that the plaintiff did the advertising as ordered, and the defendant, to that extent, paid for it. R. A. Mathews, secretary and treasurer of the defendant, testified that "he knew of the advertising being published in the El Comercio for the Pioneer Corporation at the direction of" the defendant. And, further, "I knew there was an order given and begun in July, and we paid the El Comercio Company for six issues;" and, further, "No, we had no contract with them; we gave them an order." From the foregoing, it is obvious that no harmful error was committed in not allowing further evidence as to Peterson's authority.

(4) It is claimed that the burden was upon the plaintiff to show ratification of the order by the officers or directors of the defendant, and that it failed to do so. The history of the conduct of the defendant as set out above, discloses, without doubt, that the order of May 18, 1931, was sanctioned and ratified by the defendant itself.

(5) It is claimed that the alleged order of May 18, 1931, was merely an offer, and that it was not binding on the defendant "because there was no mutuality of obligation between the plaintiff and defendant." It can hardly be reasonably contended that no contract came into existence between the parties, when, as a matter of fact, pursuant to the order, the plaintiff for six months carried out its obligation and rendered its services in doing the advertising, and those services were recognized by the defendant and paid for up to the first of the year 1932.



[illegible]

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the People of the East (CLPE) in the United States. The Commission is therefore unable to determine whether the CLPE is a genuine organization or a front organization for the Soviet Union.

[illegible]

In our judgment, the order of May 18, 1931, though signed only on behalf of the defendant, became, through the conduct of the plaintiff pursuant thereto, and also the conduct of the defendant, a binding contract with mutual obligations, those obligations being on the part of the defendant to pay, and on the part of the plaintiff to perform. There is little doubt that, if the plaintiff, in January, 1932, had refused to go on with the advertising against the will of the defendant, it would have been liable to the defendant for a breach of contract. Mathews, the secretary and treasurer of the defendant, testified that he asked Hotchkiss, one of the men of the plaintiff corporation, in October, 1931, "if it was possible to cancel this contract after six months because business was rotten." That shows that both parties themselves assumed that there was a binding contract. None of the cases cited by counsel are in conflict with this conclusion.

In Olsen v. Whiffen, 175 Ill. App. 132, the court said, "The contract, which the declaration says it had been agreed should be put in writing and remain in force five years, fixed certain prices at which defendants should sell the articles named to plaintiff, but it contained no provision binding the plaintiff to take any goods whatever from the defendants. He could order them if he wished, or could entirely fail to order any." That is not parallel to the instant case. Here the defendant gave an order in the nature of a proposition, and the plaintiff demonstrated by its conduct, to the knowledge of the defendant, its acceptance of that proposition; that made a binding contract.



in the judgment, rendered at the 1st, 1881.

though it was only on behalf of the defendant, because,

through the conduct of the plaintiff's counsel, the

and also the conduct of the defendant, a binding contract

with mutual obligations, these obligations being in the

and of the defendant on the 1st, and on the 1st of the

and on the 1st. There is no doubt that in the

and, in January, 1881, the defendant, in the

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

and, in the month of May, 1881, it was found that

(6) It is claimed that the words, "Please acknowledge this order" make it necessary that there should be some express acceptance. What we have said above answers that contention.

(7) It is claimed that if there was a valid contract, the plaintiff forfeited its right to sue thereon by inserting the advertising copy of the December issue in the January, February and March issues contrary to the instructions of the defendant; that it was the duty of the plaintiff in that case to reserve a blank space, and that it could not lawfully continue the old copy. Peterson, of the defendant company, testified, "that the custom was that in the absence of new copy, the old copy continued." In our judgment it was not, therefore, a breach of contract to insert advertising matter similar to that previously published, after the defendant had requested a cancellation of its order.

Inasmuch as no substantial error appears in the record, the judgment is affirmed.

AFFIRMED.

O'CONNOR, P.J. AND THOMSON, J. CONCUR.



(9)

THE ABOVE INFORMATION WAS OBTAINED FROM THE  
FOLLOWING SOURCES: [REDACTED]

.....

[illegible]

with all possible haste. Subsequently, in the summer of 1947,

• **Selfies at American Museum of Natural History**

[illegible]

R. C. MC GILL & Co., a  
Corperation,

Defendant in Error,

v.

PETER PIERBOLTE,

Plaintiff in Error.

3881a  
234 I.A. 639

ERROR TO

CIRCUIT COURT

COOK COUNTY.

Opinion filed June 25, 1924

MR. JUSTICE THOMSON DELIVERED THE OPINION OF THE COURT.

The complainant, R. C. Mc Gill & Co., filed its bill in the Circuit Court of Cook County, alleging that it had entered into a contract with the defendant, under which it had furnished the defendant with 19,883 bushels of onion sets which were to be marketed by the defendant, and that under the terms of their contract, the defendant and complainant were to divide the profits, derived from the sale of the onion sets by the defendant, equally. The profits to be so divided under this contract were to consist of the difference between the prices at which the onion sets were to be sold by the defendant and certain designated prices stipulated in the contract. The complainant further alleged in its bill of complaint that the onion sets had been delivered and that the defendant had marketed them at a substantial increase in price over those mentioned in the contract, with the result that he had realized a profit on the re-sale of these onion sets, and had refused to pay the complainant half of such profits, which were due it under the terms of the contract. It is further alleged that an accounting of the transaction would disclose that the defendant had received upwards of \$7,500 beyond his half of the profits; that the complainant expected to establish



RECEIVED

Get out there in 1997.

45. *Source:* *U.S. Census Bureau, Current Population Reports, 1990.*

Quesada, J. A., & ...

1997

• **Wavelength:** 23.4 nm (400 nm)

0001 00 0000 0000 0000

THIS DAY TO WHATEVER USE CONTAINING RESIDUALS, AND

The complaint, N. O. No. 111 & Co., filed in the  
the district court of Cook County, Chicago, Illinois, in the  
a complaint with the defendant, under which it was  
defendant with 10,000 shares of stock which were  
issued by the defendant, and that under the terms of that  
stock, the defendant was to deliver the stock  
and that the stock was to be delivered to the  
plaintiff as to the shares which were to be  
the defendant, the price at which the shares were  
to be sold by the defendant was to be determined  
in the complaint. The complaint further alleged  
that the defendant had failed to deliver the shares  
and that the defendant had retained them as a substantial  
part of its assets in the complaint, and the  
it was not until a writ of habeas corpus was  
that the complaint was the complaint, and the  
it was not until a writ of habeas corpus was  
that the complaint was the complaint, and the  
it was not until a writ of habeas corpus was  
that the complaint was the complaint, and the

the proof of the facts alleged in the bill, by disclosures of the defendant; that the complainant had no knowledge of the prices at which the defendant had sold the onion sets but that such information was "entirely within the knowledge of the defendant and by him concealed from the complainant, and he has refused and still does refuse to give the complainant any information as to the sale of said onion sets and the price for which the various lots were sold and refuses to pay the complainant his just proportion of the profits." The bill of complaint prayed that the defendant be required to make disclosure as to the sale of these onion sets and the price for which they had been sold, and that an account be taken as to these sales, with reference to the agreement existing between the parties, and that the defendant might be decreed to pay the complainant what, if anything, shall appear to be due on the taking of the account.

The defendant was personally served with summons but failed to appear and he was duly defaulted. Thereafter, an interlocutory decree was entered, in which the court found that the complainant had supplied the onion sets specified in the contract; that the defendant had sold them at a profit and retained all the profits, refusing to make an accounting of his transactions to the complainant; that the complainant was entitled to an accounting and disclosure by the defendant; that half of the profits belonged to the complainant and should be paid to it by the defendant. By this decree the cause was referred to a Master in chancery, to take proofs and to state and report an account of the sales of the onion sets by the defendant and the amount of money received by him on such sales, and it was ordered that the defendant appear before the master and produce all his books, papers and records of his sales of onion sets, and receipts of money on such sales, and that he furnish the complainant with a detailed statement and account of his sales.





Evidence was submitted to the master by the complainant at a hearing which was held, as stated in the master's report, "pursuant to notice." No evidence was submitted to the master in behalf of the defendant nor did the defendant appear at any time in connection with the case, until after the entering of the final decree. There were two witnesses submitted by the complainant at the hearing before the master. One was apparently a local representative of the complainant, which was a California corporation, and that witness testified that he had been told by the defendant that all the union sets involved in this contract had been sold by him. This witness further testified that he knew personally of two or three sales and he gave the "lowest average minimum prices" at which the various lots of union sets were sold. He further testified that he had asked the defendant for an accounting and that the defendant had never submitted a statement of his sales and that he had evaded the request of the witness, for such statement. The witness further stated that he found out that the defendant had delivered some of the union sets in question to a bankrupt. He also testified that the complainant had never had access to the defendant's books. The other witness referred to, merely testified that he was in the union set business; that he knew the defendant; that he knew the latter had been in possession of the union sets here in question and had been engaged in selling them, and that during the months in which he was selling these union sets, there had been minor fluctuations in the market, but that in the main the market could be characterized as "a fairly rising market;" that he had examined the quotations for union sets during these months and that in his opinion the average prices testified to by the other witness were equal to or below the average prices that prevailed during that period. From this evidence, the master stated the account, showing that the defendant had made a profit





of \$10,148.00, on the onion note, and found that there was due from him to the plaintiff the sum of \$5,074.00. The chancellor entered a decree accordingly.

At a subsequent term the defendant was served with an execution and he then, for the first time, filed his appearance and made a motion to vacate the decree and for leave to file his answer to the bill, this motion being supported by affidavit. The motion was denied. The case has been brought to this court on writ of error.

In our opinion the trial court did not err in denying the motion to vacate the decree, the defendant failing to make a proper showing of diligence, in support of the motion.

In support of his writ of error, the defendant contends that the bill of complaint filed by the complainant alleged a simple contract obligation, where nothing remained to be done except the ascertainment of the amount due from the defendant to the complainant and the payment of the same, and that the bill discloses only a single transaction between the parties, which was not involved by the element of complicated accounts. It is further contended by the defendant in this connection, that the complainant could not, with good grace, seek the intervention of a court of equity upon the ground that a discovery was required and that it had no knowledge of the accounts involved, when the record shows that it thereafter proved his case by evidence entirely within his own control. We are of the opinion that the bill stated a good cause of action within the jurisdiction of a court of equity on the ground of the necessity of a discovery. This proposition may not be said to be affected by the manner in which the complainant ultimately attempted to make its proof before the master in chancery. It is true that it appears from the record that





the complainant there did not adhere to its theory of discovery, but put on witnesses in support of its case, who were entirely within its control. Notwithstanding this, it may well have been that the complainant filed its bill on the theory of the necessity of discovery, in good faith. From all that appears in the record, it may well be that the complainant made an effort to submit its proof in conformity with the theory of its bill, but, failing in that, for some reason, it turned to the more indirect method of proof, which was ultimately submitted. Certainly the bill as filed was a good bill and not subject to a demurrer, if one had been filed on the theory that it failed to disclose a good cause of action, within the jurisdiction of a court of equity.

The defendant further contends that no notice was served upon him, either by the complainant or the master, appraising him of the hearings before the master; it being the defendant's position that even though in default; he was entitled to notice of these hearings; citing Craig v. McKinney, 72 Ill. 308; and other similar cases, in all of which the defendant filed an appearance in the case and then allowed the bill to be taken pro confesso, and a decree entered for want of an answer. However, in the case at bar, the defendant never filed his appearance. That being the case he was not entitled to notice. 31 Corpus Juris. 797.

The defendant contends further that the decree entered in the trial court should be reversed because it was not within the allegations of the bill. In this connection, it is urged that the allegation in the bill, that the accounts which would show a balance due the complainant from the defendant, if any, were exclusively within the possession of the defendant, was a vital and material allegation of the bill; that the most that the defendant could expect under such a bill was a decree directing him to produce his accounts before the master; that such a decree was in fact





which

entered; that the proof~~/~~was then submitted to the master~~was~~ such as to amount to a complete departure from the bill and the case which the complainant had therein made out; that the decree entered in accordance with the recommendations of the master, which, in turn, were based upon the proofs submitted, must be considered as false if it be taken that the facts alleged by the complainant in the bill were true. In our opinion this contention is not tenable. The decree entered, granted the complainant no relief as to matters which were not within the allegations of the bill. It may not be said that the decree is not warranted by the averments of the bill. It was held in the Monarch Brewing Co. v Welford, 179 Ill. 252, that under a decree pro confesso, a defendant may not, on error, contest the sufficiency of the evidence upon which the court acted, and that such a decree, if warranted by the averments of the bill, is unassailable. The case cited is followed in Robey v. Chicago Title & Trust Co., 184 Ill. 228, and Dunfee v. Mutual Building Ass'n., 206 Ill. 133.

For the reasons stated the decrees of the Circuit Court are affirmed.

DECREE AFFIRMED.

McConor, P. J. and  
Taylor, J. concur.





which

...that the ...

...as to ...

...and which ...

...stated in ...

...were ...

...it is ...

...the ...

...The ...

...of ...

...and ...

...the ...

...will ...

...which ...

...and ...

...the ...

...the ...

...the ...

For the ...

...

...

...

645  
23 - 28845

PEOPLE OF THE STATE OF ILLINOIS,  
Defendant in Error,

v.

SAM BOBELL,

Plaintiff in Error.

38822  
234 I.A. 639

ERROR TO

MUNICIPAL COURT

OF CHICAGO.

Opinion filed June 25, 1924,

MR. JUSTICE THOMSON delivered the opinion of  
the court.

An information was filed in the Municipal Court  
of Chicago against the defendant Sam Bobell, by one Schwartz,  
charging that the defendant "on the \_\_\_\_ day of February,  
A. D. 1923, at the City of Chicago, aforesaid, did then and  
there unlawfully within prohibition territory, have in his  
possession without a permit, intoxicating liquor, for beverage  
purposes, said intoxicating liquor, then and there not being  
for sacramental or medicinal uses or for any lawful use or  
purpose, in violation of section 3 of the Illinois Prohibi-  
tion Act." This information was signed by Schwartz but it  
was not sworn to. The form of affidavit was signed by Schwartz,  
but the form of the jurat was not signed. The defendant  
signed a jury waiver and entered a plea of not guilty. The  
evidence was submitted to the court, resulting in a finding  
of guilty, in manner and form as charged in the information,  
and the trial court entered judgment on the finding, that the  
defendant pay a fine in the sum of \$1,000. The case is pre-  
sented to this court by writ of error on the common law re-  
cord.

It is contended that the trial court was without



3341A. 888

FILED IN THE OFFICE OF THE  
CLERK OF THE DISTRICT COURT

IN THE  
DISTRICT COURT

IN THE DISTRICT COURT

Opinion filed June 22, 1934

THE DISTRICT COURT OF THE DISTRICT OF COLUMBIA

DOES hereby

as testimony was filed in the District Court  
 at Chicago against the defendant and hereby, in and to wit,  
 do hereby certify that the defendant was the  
 A. J. 1934, at the City of Chicago, Illinois, and that the  
 Court appearing with the defendant and the  
 defendant without a party, interested party, for the purpose  
 purposes and interested parties, then and there was  
 the defendant or defendant was at the time and  
 purpose, in violation of section 9 of the Illinois  
 laws and. This defendant was also in violation of the  
 was not under the law of Illinois and signed by the  
 that the law of the State was not signed. The defendant  
 signed a party which was signed a law of the State. The  
 defendant was released in the State, standing in a  
 at Chicago, in violation of the law of the State, and  
 and the State Court ordered judgment on the finding that the  
 defendant was a law of the State of Illinois. The law is  
 signed in this court by the law of the State for the

jurisdiction of the subject-matter of the case at bar, because the information was by an individual and was not sworn to, as the statute requires. In this connection, counsel for the plaintiff in error has called our attention to People v. Clark, 260 Ill. 180; People v. Zelotnicki, 343 Ill. 185; People v. Blum, 173 Ill. App. 493; and People v. Nelson, 150 Ill. App. 395. In the Clark case, the defendant submitted a motion to quash the information, in the trial court, and the action of the court in overruling that motion was assigned as error. Later, in the course of the trial, the defendant submitted motions for a new trial and in arrest of judgment the action of the trial court in overruling those motions was also assigned as error. In the Zelotnicki case, a motion was submitted by the defendant in the trial court, to quash the amended information on which the defendant was convicted, and the action of the trial court in overruling that motion was assigned as error. It does not appear, from the opinion in the Blum case, whether a motion to quash or a motion in arrest of judgment had been submitted in the trial court. In the Nelson case, the defendant submitted motions in the trial court for a new trial and in arrest of judgment, and it was held that the trial court had erred in denying the latter motion. From the record in the case at bar, it does not appear that the defendant moved to quash the information, nor does it appear that having been found guilty he either moved the court for a new trial or in arrest of judgment. We are of the opinion that he, therefore, waived the defect in the information now complained of. People v. Monaker, 361 Ill. 395; People v. Foxys, 283 Ill. 438; People v. Bell, 313 Ill. App. 144; People v. Ebert, 317 Ill.





App. 334. In the Honaker case, two informations were involved, which had been filed by a state's attorney. They were not supported by affidavit. In that case, the defendant having been found guilty, as charged in the informations, motions for a new trial and in arrest of judgment, were made and overruled. The motions in arrest of judgment were based on the ground that the warrants which had been issued and on which the defendant had been arrested and brought to trial, were void and in violation of Section 8 of the Bill of Rights, because they were not based on informations supported by affidavits, citing People v. Clark, supra. The Supreme Court sustained the defendant's position and reversed the judgment of the trial court. In the course of its opinion, the Supreme Court said, "Without doubt, a defendant may waive the benefit of the constitutional provision and could waive it by failing to make any objection, but it was not waived in this case." The Powers case also involved an information which was not verified, and the court pointed out that the prosecution of the defendant, under such an information, was in violation of his constitutional right, and that this question could be raised by motion in arrest of judgment. The court held that the defendant had waived the right to raise that question, by taking the case to the Appellate Court. In the course of its opinion in this case, the Supreme Court said, "There was no defect in the information, which charged the offense for which the plaintiff in error was convicted, the only objection being that it was not verified, and that objection being waived, it was legally sufficient to sustain the judgment."

In support of his writ of error, the defendant further





contends that the information on which he was convicted, was defective in that it merely alleged that he had in his possession intoxicating liquor for beverage purposes, in violation of the Illinois Prohibition Act, whereas that Act expressly provides that liquor becomes intoxicating when it contains a specified alcoholic content, and the information does not allege that the liquor in question had such an alcoholic content as to make it intoxicating, under the definition of the Act. In our opinion, this contention is also untenable. In the first place, the sufficiency of the information, in this respect, was not raised in the trial court by proper motion, and in the next place, the information need not plead evidence. As pointed out above, the evidence heard by the trial court in the case at bar has not been preserved, and we are obliged to assume that sufficient evidence was heard by the trial court to sustain the judgment, and that, therefore, there was evidence to the effect that the defendant did have liquor in his possession and that it was intoxicating, within the provisions of the Illinois Prohibition Act, which the information charged the defendant with violating. As to the further contention of counsel for the defendant, to the effect that "the whole proceeding was a deprivation of the rights guaranteed plaintiff in error under the Constitution of Illinois and of the United States," it need only be said that all constitutional questions have been waived by suing out a writ of error from this court.

We find no error in the record and, therefore, the judgment of the Municipal Court is affirmed.

AFFIRMED.

O'CONNOR, P.J. AND TAYLOR, J. CONCUR.





3883a

EDWARD NELSON and A. J. HUNTER,  
as Administrators, with the  
Will annexed, of the Estate of  
David H. Beecher, Deceased,

Appellants,

v.

E. E. MCCARTHY,

Appellee.

234 I.A. 639

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed June 25, 1924.

MR. JUSTICE THOMSON delivered the opinion of  
the court.

The Copper State Mining Company was the owner and  
operator of a copper mine in the State of Arizona. It  
maintained a business office in the City of Minneapolis,  
Minnesota. One Tew was president and general manager of the  
company and the defendant McCarthy was a stock holder and  
one of the members of the Board of Directors. Beecher, the  
plaintiffs' intestate, was in the business of making loans  
and handling commercial paper in the City of Minneapolis.  
The Mining Company was in need of additional funds, for the  
purpose of providing an increased equipment at its mine.  
Some effort was made to get Beecher to invest in the stock of  
the company, but without success. Tew, who was negotiating  
with Beecher, then tried to negotiate a loan, but Beecher  
told him that he had no funds in hand and was not in a posi-  
tion to make the desired loan. After some further negotiat-  
ions, Beecher told Tew that he might be able to negotiate  
notes, signed by substantial individuals who were directors  
of the Mining Company, at different banks in the State of





North Dakota, in which he, Beecher, was interested. He further told him that he would not be able to negotiate the Mining Company's notes because these banks were unwilling to loan money to mining companies, but that if the notes were signed by individuals whose financial standing was such that it would bear investigation, he would be able to negotiate the notes. In the course of these negotiations, Beecher said something to the effect that a loan bearing seven per cent did not interest him, but that he would want some stock in the company for making this loan, and Tew said to him that if he could put through the loan for the Company, they would give him stock of the par value of \$20,000, as a commission. At Beecher's suggestion a meeting of the Board of Directors of the Mining Company was held, at which the defendant was present, and a resolution was there adopted, reciting that whereas it was necessary to raise additional funds immediately, to meet payments coming due on their new power plant, and other machinery, and sufficient funds were not in hand to meet these payments, therefore, it was resolved that the officers were thereby authorized to negotiate a loan of \$20,000 upon such conditions as they might deem necessary to secure it. And it was further resolved that provision for the payment of this loan be made, by setting aside out of the proceeds from the product of the mine, a sufficient sum each month to pay the loan when it came due. Following this action of the Board of Directors, four of them executed notes aggregating \$20,000. Of these notes, the defendant McCarthy executed two, each for the sum of \$2,500. These notes were all turned over to Beecher, who



... ..  
... ..  
... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

negotiated them at the North Dakota banks receiving drafts which he turned over to the president of the Mining Company and they were deposited in the Mining Company's account, and the money thus raised was used by the Company in the conduct of its business.

At the time the Director's notes were executed and delivered to Beecher, the note of the Mining Company was executed for the sum of \$20,000, payable to the order of the plaintiff, Edward Nelson, who was Beecher's attorney, as trustee, at Beecher's request and for the purpose of furnishing collateral to secure the payment of the director's notes when they fell due. The Company also issued a certificate for \$20,000, par value of its stock, to Beecher as a commission for negotiating the loan and it further issued certificates to each of the four directors, calling for \$5,000, par value of its stock, as a bonus for executing the notes in connection with the loan. One of the notes executed by the defendant McCarthy, was payable to the First National Bank of Grand Forks. Before this note was negotiated it was endorsed by Beecher as follows: "For value received I hereby waive demand, protest and notice of protest, and guarantee payment of the within note." The other note executed by the defendant, McCarthy, was payable to the order of the Wilton State Bank of North Dakota.

Apparently none of these notes were paid by their makers when they matured, and the company was not in a position to pay its collateral note. At about the time of the maturity of the notes, there was another meeting of the Board of Directors of the Mining Company, at which a resolution was





adopted reciting that whereas the \$20,000 loan had been <sup>made</sup> from Beecher, on the authority of the previous action of the Board of Directors, and the Company's note issued therefor, and said note was then due and the Company was unable to pay it, and it was necessary to renew it, it was therefore resolved that the officers of the Company were authorized to renew said note, on terms satisfactory to them and to the holder of the note, and that the collateral security to said note stand as originally given as security for such renewal. This resolution was apparently treating the Company's note as a primary obligation and the directors' notes as the collateral security therefor.

The defendant, McCarthy, was unable to pay either of the two notes which he had executed. Beecher took up the note drawn to the order of the First National Bank of Grand Forks, payment of which he had guaranteed. To enable Beecher to take up the note which the defendant, McCarthy, had executed, payable to the order of the Milton State Bank of North Dakota, McCarthy executed a new note, payable to the order of Beecher, at the Scandinavian-American National Bank of Minneapolis, and apparently Beecher discounted that note and with the proceeds took up the McCarthy note, which was due at the Milton State Bank of North Dakota. The Mining Company paid some interest to Beecher on this loan, without instructing him to apply it on any particular note or notes. Nothing was ever paid on the principal of the McCarthy notes, and no action was ever taken by Beecher during his lifetime. After his death, the plaintiffs, as Executors of his Estate, brought this action to recover the amounts due on the two notes executed by the defendant, McCarthy, one drawn to the order of the First National



[illegible][illegible]

Bank of Grand Forks, payment of which Beecher had guaranteed, and the other drawn to the order of Beecher, at the Scandinavian-American National Bank of Minneapolis, which had been given to enable Beecher to take up McCarthy's previous note drawn to the order of the Wilton State Bank of North Dakota.

The defendant's amended affidavit of merits set forth that the defendant was an accommodation maker of these notes and that he had never received any consideration for them or any proceeds resulting from their discount; that McCarthy had executed them solely as an accommodation to Beecher to enable him to raise funds for the purpose of making a loan to the Mining Company, and for these reasons the defendant was not liable to Beecher or his estate, on the notes. The testimony introduced by the respective parties, in connection with the issues thus presented, was submitted to a jury and a verdict was returned, finding the issues for the defendant. Judgment followed accordingly, to reverse which the plaintiffs have perfected this appeal.

There is some correspondence in the record, between Beecher and the defendant, Beecher endeavoring to induce the defendant to take up his notes and the defendant representing that he would be glad to do so if he could, but that he was not able to, and stating that he would appreciate it if Beecher would have the time of payment on these notes extended, or arrange for renewals, and also stating that at the time the notes were executed it was understood that the Mining Company was to pay this loan and save the defendant and other directors harmless on the notes executed by them





individually. This correspondence, however, we do not regard as controlling. On the facts presented, we are clearly of the opinion that the defendant McCarthy may not be considered as an accommodation maker of these notes, for the benefit of Beecher. The funds raised by means of these notes came from the various North Dakota Banks. The Mining Company, in which the defendant and the other makers of the notes were directors, was in need of funds and these directors were willing to execute notes to make this loan possible. There was of course good consideration for the making of the notes, although that consideration did not move from the Banks to the makers, or even through the makers, but rather from the Banks, through Beecher, by means of whose endorsement the notes were negotiated at the Banks, to the Mining Company.

We are of the opinion that on the facts presented, the plaintiffs were entitled, as a matter of law, to recover the amounts of the two notes sued upon, with interest. The facts involved are not disputed. At the close of the evidence in the trial court, counsel for the plaintiffs submitted a motion requesting the trial court to find the issues in their favor. Thus the question of law, as to the plaintiffs' right to recover, on the facts presented, was properly raised, and for the reasons stated, we are of the opinion that the trial court erred in denying the plaintiffs' motion. On the record, judgment for the plaintiffs may be entered in this court without remanding the cause to the trial court. Adam v. Columbian Nat'l. Life Ins. Co., 218 Ill. App. 54. The judgment of the Municipal Court is, therefore, reversed





and judgment in favor of the plaintiffs is entered in this court for \$5,000 and \$2,035.74 interest, being interest on \$2500 from May 25, 1917 to this date less \$260.55, and interest on \$2500 from November 25, 1917 to this date, less \$200,- making the judgment entered in this court in favor of the plaintiffs, a judgment for the total sum of \$7,035.74.

JUDGMENT REVERSED AND JUDGMENT HERE.

O'CONNOR, F.J. AND TAYLOR, J. CONCUR.



and judgment in favor of the plaintiff is shown in this  
case for the fact that the defendant, being informed as  
to the facts of the case, and that the plaintiff was  
not in the same position as the defendant, and that the  
plaintiff was in a position to be able to do so, and  
that the defendant was in a position to be able to do so,  
and that the plaintiff was in a position to be able to do so,  
and that the defendant was in a position to be able to do so,<

and that the plaintiff was in a position to be able to do so,

661  
32 - 38661

ELABORATED READY ROOFING COMPANY,  
a corp.,

Appellant,

v.

ADAM F. GOLD,

Appellee.

388 4a  
} 234 I.A. 639

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed June 25, 1924.

MR. JUSTICE THOMSON delivered the opinion of  
the court.

The plaintiff company brought this action of the fourth class in the Municipal Court of Chicago, to recover the sum of \$350.00, for work and services alleged to have been rendered by it under a contract in writing between the parties, calling for the painting of the defendant's house and garage "with two coats of very best quality of paint composed of pure linseed oil and pure white lead," including twelve storm windows, the painting of eave troughs, inside and outside, and all windows to be puttied where necessary. Apparently, by its statement of claim, the plaintiff did not base its action on this written contract, but merely alleged that the defendant was indebted to it in the sum of \$350.00, which was the price mentioned in the written contract, the statement of claim alleging that the painting was done at the defendant's special instance and request. The plaintiff offered the contract in evidence in presenting its case. Among other things contained in the defendant's affidavit



887.1.1.88

RECEIVED - 100 - 10

100 - 10

100 - 10

100 - 10

100 - 10

Opinion filed June 25, 1984

RECEIVED - 100 - 10

100 - 10

The following summary is intended to provide a brief overview of the case. The summary is based on the facts as presented in the pleadings and the evidence submitted. The summary is not intended to be a final determination of the case, but rather a summary of the issues and the evidence presented. The summary is based on the facts as presented in the pleadings and the evidence submitted. The summary is not intended to be a final determination of the case, but rather a summary of the issues and the evidence presented.

of merits were allegations to the effect that the work in question was never completed; that the material used by the plaintiff was not the best quality of oil and white lead; that the paint that was put on was of bad quality, so that it blistered badly; that during the progress of the work and before it was completed or accepted, a large amount of colored paint was spilled or thrown on one side of the house; that the plaintiff refused and neglected to finish the work, although often requested to do so; that the plaintiff's agent promised the defendant that the work in question would be done by union painters, but that it was not done by union painters, but "by workmen who were unskilled and unable to do the quality of work required in the agreement."

The issues were presented to the trial court without a jury, resulting in a finding for the defendant and judgment accordingly, to reverse which the plaintiff has perfected this appeal. The testimony submitted by the respective parties is in sharp conflict. It was the position of the plaintiff that the work it had to do, at the defendant's request, was properly done, and that it was entitled to receive the compensation agreed upon. The plaintiff's testimony was such as to support that contention. On the other hand, the defendant contended that the work was poorly done, and there is considerable testimony in the record supporting that contention. After the plaintiff did all the work which was done on the defendant's house, there was a quantity of mahogany stain smeared over some parts of the house. So far as the evidence shows, this was apparently the work of some outside individuals who took exception to the fact that the painters on this job had been





non-union men. In our opinion, this incident does not affect the merits of the controversy presented by the record. If the plaintiff performed the work in question properly, it should be paid for it. On the other hand, if the work was not properly executed, the defendant may not be required to pay the price agreed upon. As already stated, the evidence on that issue is in hopeless conflict.

For the plaintiff, its foreman, Redelik, testified that he superintended this painting job, visiting it each day and looking it over; that the defendant's house was given two coats of paint, and that all the work done, with the exception of some work on the storm windows, which the men subsequently returned to do but they were not allowed to get into the house. On cross-examination, this witness testified that the defendant refused to pay for the work, because of the mahogany stain which someone had daubed over his house, after the plaintiff's men had left the job, the defendant insisting that the plaintiff remove the stain and the plaintiff declining to do so. He testified this was the only complaint from the defendant and that the trouble between the parties arose over this situation.

Another employee of the plaintiff, one Boyle, testified that he was the "boss" on this job; that all the work was done under the agreement, with the exception of work on the storm windows.

The one representing the plaintiff, who secured the defendant's order for this painting job, was one Sonnell. He testified that he saw the job after it was finished and



uncommon one. In our opinion, this is the only one

which the writer of the interesting paper of the

present, it is the only one which is known

to be the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

For the present, the present, the present, the present

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

which is the only one which is known to be the only one

made a second visit to the premises about two weeks or ten days later, at the defendant's request, when he saw the mahogany stain smeared over the house; that on the occasion of the first visit of the witness to the house, the defendant had not complained about the work but was very much pleased with it. He also testified that when the defendant asked him if the plaintiff's men were union men he told him that the foreman of their painters was a union man, but that nothing else was said, and that at that time the witness had no ideas as to the work being done by non-union men, and that he did not know the work had been done by non-union painters until after the work had been finished.

One Tennant, testified that he had been in the painting business, and had done thousands of jobs. At the time he testified, he was a traveling salesman in the paint business. He testified that he had examined the premises in question and that in general it looked "as though it were a fairly nice job. I noticed in certain places about the house that the house doesn't look good now. (four months after the house was painted) I don't know why, because the body of the house is all right and looks to me like a neat job. Primarily it should be all right, and the material used is all right, but I noticed some blisters on there, on the east side and under the front porch. It would be hard to determine what was the cause of these blisters. \* \* \* It makes no difference how good the paint is. The last coat of paint has thickened on the other paint, and the first paint has peeled away. The surface of the wood itself could have been moist in the first instance \* \* \* we never guarantee to be respons-



47

[illegible][illegible]

ible for blisters." This witness further testified that he was selling paints and instructing men in painting, but that "there is a lot of things I don't know about painting." On cross-examination he testified that if you used too much benzine in paint it would dry up and blister, and that under certain circumstances paint made of the best quality of oil and white lead will blister; that on the east side of the defendant's house, there were eight or ten places on the clapboards blistered.

One Lewis, testified that he was the general manager of the plaintiff company and that, as such, he bought the white lead and oil that was used in making the paint that was used on this job, and that they were good materials.

The defendant testified that the work in question had never been completed; that the porch ceiling had only one coat of paint; that there was a window in the front that "never had a drop of paint on it;" and that an attic window needed painting; that there was a window on the west side of the house omitted. He also testified to the daubing of some mahogany stain over the paint and that after this happened, he sent for Wonnell, and asked him if he had not represented that the plaintiff's employees were union men and he replied that their head painter was a big official in the union and he supposed the painters were too, but that he had found out they were not. The defendant further testified that on the east and north sides of the house there were blisters in the paint, from the size of dime up to larger than a dollar, and that the paint was peeling off the back door; that he would





"venture to say there is not a six inch piece that is not blistered. The whole side of the house will have to be scraped off and repainted. The front on the southeast corner has started to peel. That is all blistered in here (indicating), and on the west side under the bay window and up at the end of the porch." On cross-examination, he testified that some of the blisters began to appear before the mahogany stain was daubed on the house; that the back door began blistering a few days after it was painted; that he never had any talk with Hoyle, in which he expressed either satisfaction or dissatisfaction with the work; that he went to the plaintiff's place of business early in July and talked to a Mr. Becker, who said he had heard about "the trouble" and said that if the job was not finished they would be responsible, "but the job is finished" so it "is your funeral"; that the defendant replied that he had better read the contract and if he did he would find the job wasn't finished.

One Grisham, for the defendant, testified that he was a painting contractor and that he had looked over the defendant's house on the Sunday preceding the trial of the case; that he looked "all around the house, on the east side and on the north side and it was completely full of blisters. I would venture to say that there wasn't a board in the house but what was blistered all the way through, some there about the size of a dime, and others the size of a dollar. As to the general appearance of the work, it was supposed to have two coats, you could see right through it. It didn't look as good as one coat of pure white lead would. \* \* \* it had the appearance as if too much Japan dryer had been used in the paint \* \* \* that is my opinion in the painting business."





One Swenson, another painting contractor, testifying for the defendant stated that he had looked over the house "pretty close", and as to the blistering, there was a lot of it and the "back door is nothing but a blister, and the north side is blistered \* \* \* I could not say how many there are, but there are a lot of blisters. As to the cause of the work blistering there, that is a hard question. That house was in a good condition. That is, there was plenty of paint on it." On cross-examination this witness was asked whether he had told the defendant that he would be sorry if the plaintiff did the work, and he answered that he did not know whether he said "sorry" - "I told him if - I don't think they did first class work, because I have seen some of their work." He was then asked what he meant when he said they would be sorry if the plaintiff did the work and he answered, "Because I saw a house that they had done work on, on Sales avenue. I don't think it looked very good. It was very poor lead and oil. I even saw big blisters coming right over the work."

One Johnson, who had been in the painting business for 18 years and had apparently been employed to paint out the mahogany stains which have been referred to, testified that he saw the painting on the east and north sides of the defendant's house and it "did not look to me that the best quality of linseed oil and white lead was used. It looked yellow and streaky."

One Williams, who testified he did office work, stated that "The work appears to be the worst mess that I have ever seen on a freshly painted house; badly blistered and





looks very bad." He also testified to a conversation he said had occurred in his presence, between the defendant and the plaintiff's agent, Wonnell. The latter testified in rebuttal that he didn't remember ever seeing Williams before he appeared on the witness stand.

No procedural errors are complained of by the plaintiff in support of its appeal. The only contention advanced seems to be that on the evidence in the record it is entitled to payment for its work, and therefore, the judgment should have been in its favor. On the conflicting evidence contained in the record, the substance of which has been referred to above, this court could not say that the finding of the trial court, for the defendant, was against the manifest weight of the evidence. We are, therefore, not in a position to disturb the judgment and it is affirmed.

JUDGMENT AFFIRMED.

O'CONNOR, P. J. CONCURS;  
TAYLOR, J. DISSENTS.





81 - 22731

WISCONSIN LIME AND CEMENT CO.,

Complainant below,

v.

THE MUTUAL TAILORING COMPANY,  
A CORP., ET AL.

THE MUTUAL TAILORING CO., a corp.,

Appellee,

v.

WISCONSIN LIME AND CEMENT CO., a  
corp., et al On appeal of  
GEORGE A. HENRICH CO.,

Appellant.

3885a  
234 I.A. 640

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

*Artisan Insurance*

Opinion filed June 25, 1924.

MR. JUSTICE THOMSON delivered the opinion of  
the court.

The Mutual Tailoring Company, hereinafter referred  
to as the owner, entered into a contract in December 1913, for  
the erection of a building, with one Walter, hereinafter re-  
ferred to as the general contractor, at a cost of \$2.40 per  
square foot of gross floor area, which amounted in full to  
\$215,572.03. The general contractor entered into contracts  
with a number of sub-contractors, among which was the George  
A. Henrich Co., hereinafter referred to as the sub-contractor.  
The latter was awarded a sub-contract covering the heating  
plant, at the contract price of \$15,600. On this subcontract  
the contractor made payments aggregating \$12,000, leaving a  
balance of \$3,600 unpaid.

The owner negotiated a building loan with Greenbaum  
Rons Bank & Trust Company, the proceeds of which were paid out



2841A. 840

ALVIN KARP

ALVIN KARP

ALVIN KARP

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

10

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

10

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

Opinion filed June 20, 1934.

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

ALVIN KARP (ALVIN KARP)

by the latter from time to time to the contractor. After the latter had thus received from the bank a total of \$125,750, leaving a balance in its hands, amounting to \$19,845.03, the contractor went into bankruptcy and abandoned the contract. The owner completed the building, which was then unfinished, and it is conceded that the owner reasonably expended in that connection, the sum of \$16,337.53, leaving a balance in the hands of the owner's fiscal representative, the bank, amounting to \$3,514.15. There were balances due a number of sub-contractors, on their contracts with the contractor, which remained unpaid. Several of these sub-contractors filed original bills for liens and others filed intervening petitions. The owner filed its cross petition for a general settlement, pursuant to Section 30 of the Mechanic's Lien Act, seeking to effect a settlement of all these claims. These proceedings were then consolidated and referred to a Master in Chancery and after a hearing, a report was submitted to the chancellor, recommending the entry of a decree in accordance with the prayer of the cross petition of the owner. The chancellor entered a decree accordingly, finding that certain subcontractors were entitled to liens against the balance of \$3,514.30, in the hands of the owner, which had been tendered in court, in the proportion which each claim bore to the total of the claims of the subcontractors. It had been and still is, the claim of Henrich & Co. that it was entitled to a lien against the property of the owner for the full amount of its claim and on that theory it has perfected this appeal from the decree entered by the chancellor in the Superior Court of Cook County.

The provisions of the Mechanic's lien statute of



100

By the latter time time to time in the afternoon. After the  
latter had been received from the bank a total of \$100,000.  
Having a balance in the hands, amounting to \$10,000.00, the  
company went into bankruptcy and assigned the company.  
The owner assigned the building, which was then sold.  
and it is reported that the owner personally attended in that  
connection, the sum of \$10,000.00, having a balance in the  
hands of the company's fiscal representative, the sum, amount-  
ing to \$1,000.00. There were released the a number of sub-  
scribes, including persons with the company, which  
remained unpaid. Several of these subscribers filed  
original bills for items and others filed intervening petitions.  
The owner filed the same petition and a number of others.  
In answer to Section 10 of the schedule filed and, stating  
he effected a settlement of all these claims. These petitions  
were then consolidated and referred to a master in bankruptcy  
and after a hearing a report was submitted to the court  
transmitting the copy of a decree in conformity with the  
order of the court petition in the matter. The respondent  
objected to certain provisions of the report and petitioned for  
their setting aside and return of \$1,000.00, in  
the hands of the owner, which had been received by him, in  
the proportion which each claim bore to the total of the claims  
of the respondents. It had been and will be, the claim of  
Section 10. That it was referred to a clerk against the pro-  
prietor of the owner and the bill amount of the claim was on  
that point as the petition was signed from the owner's name  
by the respondent in the separate books of that party.

our State, which have to do with the question thus presented are the following:

Sec. 5. "It shall be the duty of the contractor to give the owner, and the duty of the owner to require of the contractor, before the owner or his agent, architect or superintendent, shall pay or cause to be paid to said contractor or to his order, any moneys or other consideration, due or to become due such contractor \* \* \* a statement in writing, under oath or verified by affidavit, of the names of all parties furnishing materials and labor, and of the amounts due or to become due each."

Sec. 21. "In no case, except as hereinafter provided, shall the owner be compelled to pay a greater sum for or an account of the completion of such house, building or other improvement, than the price or sum stipulated in said original contract or agreement, unless payments be made to the contractor or to his order, in violation of the rights and interests of the persons intended to be benefited by this Act."

Sec. 24. "Subcontractors, or party furnishing labor or material, may at any time after making his contract with the contractor, and shall within sixty (60) days after the completion thereof, or, if extra or additional work or material is delivered thereafter, within sixty (60) days after the completion of such extra or additional work or final delivery of such extra or additional material, cause a written notice of his claim, and the amount due or to be come due thereunder, to be personally served on the owner, or his agent or architect, or the superintendent having charge of the building or improvement \* \* \* provided, farther, such notice shall not be necessary when the sworn statement of the contractor or sub-contractor, provided for herein, shall serve to give the owner notice of the amount due and to become due, but where such statement is incorrect as to the amount, the subcontractor or material man named shall be protected to the extent of the amount named therein as due or to become due to him."

Sec. 27. "When the owner or his agent is notified as provided in this Act, he shall retain from any money due or to become due the contractor, an amount sufficient to pay all demands that are or will become due, such subcontractor, tradesman, materialmen, mechanic or workman, of whose claim he is notified, and shall pay over the same to the parties entitled thereto. \* \* \* Any payment made by the owner to the contractor after such notice, without retaining sufficient money to pay such claim, shall be considered illegal and made in violation of the rights of the laborers and subcontractors, and the rights of such laborers and subcontractors to a lien shall not be affected thereby, but the owner shall not be held liable to pay to any laborer and subcontractor, or other person whose name is omitted from the statement provided for in sections five and twenty two of this Act, nor for any larger amount than the sum therein named as due such person (provided such omission is not made with the knowledge or collusion of the owner) unless previous thereto





or to his payment to his contractor, he shall be notified, as herein provided, by such persons of their claim and the true amount thereof."

Section 22 of the Act, referred to in the last section quoted, has to do with the rights of material men and is not applicable to the questions presented here.

In addition to the facts heretofore referred to, the following are material. During February, March and April 1920, the bank paid the contractor an aggregate of \$112,500, on his contract before any statement was submitted by him or required of him as provided in Section 5 of the Mechanic's Lien Act. On April 17, 1920, the contractor furnished the owner his first sworn statement showing the names of the various subcontractors and material men with whom he had contracts and the amounts due and to become due to each of them under their respective contracts. According to this statement the contractor at that time owed the subcontractors or there was to become due from him to them, the aggregate sum of \$90,033.50. This statement referred to George A. Henrich & Co., as one of the subcontractors and showed the balance then due and to become due to that subcontractor under its contract, to be \$13,600. At the time the contractor submitted the sworn statement of April 17, to the owner, showing the balance then due and to become due the subcontractors, to be \$90,033.50, there remained in the hands of the owner and still unpaid to the contractor, the sum of \$103,072.03, which, it will be seen, was more than enough to meet all outstanding accounts of subcontractors.

Another sworn statement was submitted to the owner by the contractor under date of July 13, 1920, according to



to be in the interest of the Government, he will be  
 notified, he will be notified, he will be notified  
 that this is the Government's policy.

Section 23 of the Act, referred to in the last

section, which has to do with the right of material and

and is not applicable to the Government's interest.

It is also in the Act, referred to in the last

section, which has to do with the right of material and

and is not applicable to the Government's interest.

It is also in the Act, referred to in the last

section, which has to do with the right of material and

and is not applicable to the Government's interest.

It is also in the Act, referred to in the last

section, which has to do with the right of material and

and is not applicable to the Government's interest.

It is also in the Act, referred to in the last

section, which has to do with the right of material and

and is not applicable to the Government's interest.

It is also in the Act, referred to in the last

section, which has to do with the right of material and

and is not applicable to the Government's interest.

It is also in the Act, referred to in the last

section, which has to do with the right of material and

and is not applicable to the Government's interest.

It is also in the Act, referred to in the last

section, which has to do with the right of material and

and is not applicable to the Government's interest.

It is also in the Act, referred to in the last

which, the amounts then due and to become due from the contractor to the subcontractors, was \$14,035.50. On this statement, the name of George A. Henrich & Co. did not appear. According to this latter sworn statement from the contractor to the owner, the subcontractor had then been paid in full, the amount due under its contract. The work under that contract had been completed July 1, 1930. As a matter of fact the sworn statement of the contractor last referred to was false. The contractor had paid this subcontractor an aggregate amount of \$12,000, leaving \$2,600 really due under this contract on July 13, 1930, when the contractor submitted his last sworn statement.

In the meantime, between the time the contractor submitted his first sworn statement in April and the time he submitted his last sworn statement in July, further payments had been made to the contractor by the bank, as the owner's agent, to the extent of \$78,230, making the total amount paid to the contractor up to the time the last sworn statement was submitted by the contractor to the owner, \$190,730.00, which left a balance in the hands of the owner or its agent, the bank, amounting to \$24,842.03, or more than \$10,000 in excess of the amount then due and to become due from the contractor to the subcontractors, according to the last sworn statement of the contractor. After that last sworn statement was submitted, the owner, through the bank, made another payment of \$5,000 to the contractor (still leaving enough money in its hands due on the contract to take care of all the outstanding accounts of subcontractors according to the contractor's last sworn statement) and short-





ly after that the contractor went into bankruptcy and the owner proceeded to complete the building, as previously stated.

On the facts thus presented, we are of the opinion, under the authority of The Knickerbocker Ice Company v. Halsey Bros. Company, 263 Ill. 341, and the Berkshire Warehouse Company v. Hilger & Co., et al., 268 Ill. 463, that the chancellor correctly ruled that George A. Hendrich & Co. was not entitled to a lien against the owner's property for the balance due under its contract, but that, as to the owner, that subcontractor was only entitled to receive that proportion of the amount remaining in the owner's hands which its claim bore to the total unpaid claims of all the subcontractors. It is admitted that the owner did not know that the sworn statement submitted by the contractor in July, was false. Section 27 of the Mechanic's Lien Act provides that the owner shall not be held liable to pay any subcontractor, whose name is omitted from the sworn statement of the contractor, unless previous to the submission of such statement, or to the owner's subsequent payments to the contractor, the owner shall be notified of his claim by the subcontractor. It is admitted that no such notice was given the owner by George A. Hendrich & Co. until after the owner had made the last payment, which was made, to the contractor.

But the subcontractor claims that it should be awarded a lien for the full amount of its claim, against the owner's property, because the owner failed to comply with the requirements of the Mechanic's Lien Act, in that it made payments aggregating nearly \$80,000.00 to the contractor, after the latter submitted his sworn statement in





April, 1920, showing over \$90,000.00 then due and to become due the subcontractors, whereas, under the provisions of Section 37 of the Act, it was incumbent on the owner to retain from the amount then remaining in the owner's possession and due the contractor, "an amount sufficient to pay all demands that are or will become due," the subcontractors, and to "pay over the same to the parties entitled thereto." Under the decisions of our Supreme Court in the cases above cited, it is clear that such payments as the owner made to the contractor, after the submission of the contractor's first sworn statement, did not injure the subcontractor in any way. While the owner was making payments to the contractor, to the extent of \$78,230, between the time the contractor submitted his first sworn statement, and the time he submitted his last statement, the contractor, in turn, was making payments to the extent of \$10,000.00 on the subcontract of Henrich & Co. and on all the subcontracts, the contractor made payments during that period, aggregating \$78,008.00, according to the figures submitted in those statements, on which sworn statements, it is admitted the owner had the right to depend and rely. Both at the time the first sworn statement was submitted and at the time the last one was submitted, and also after the last payment of \$5,000.00 was made to the contractor, subsequent to the submission of the last statement, there was sufficient remaining in the owner's hands to take care of all outstanding accounts of the subcontractors, as shown by those sworn statements. Moreover, from anything that appears in this record, it may not be said that such was not the situation at any time during the entire period of these transactions. On the oral argument of this case in this court, counsel for the subcon-





tractor took the position that such payments as were made to the contractor by the owner's agent, the bank, before any sworn statement was submitted by the contractor at all, those payments aggregating \$112,500.00, could not be considered as having the effect of entitling the subcontractor to a lien against the owner's property for the full balance due on its contract, although such payments were made contrary to the provisions of sections five and twenty seven of the Act. That position was fully warranted by the decision of the Supreme Court in the Harkshire case, supra, where the court held that payments, some of which were made before the contractor submitted any sworn statement or was required by the owner so to do, would not necessarily render the property of the owner subject to a sub-contractor's lien; that "it would be a most unreasonable construction of this statute to hold that if any mistake as to following the technical provisions of the statute were made by the owner before paying out money, he could never after protect himself against such mistake in future payments, in the subsequent statements required of the contractor." The court further held that "the benefit of requiring statements from the contractor from time to time, as the conditions of work changed, would be practically nullified," by so holding. In the case cited the court pointed out that the last time a statement was filed in accordance with the requirements of section five of the Act, the owner had on hand ample funds to pay the claim of the subcontractor there seeking a lien and that the subcontractor could have protected itself by filing notice with the owner as provided by the Act, before further payments were made but it did not do so. The court then pointed out further that the last statements of





the contractor made no reference to the subcontractor's claim and that the owner had a right to rely on those statements and the court concluded that the subcontractor "was not injured in any way by the failure of the appellee (owner) to require the filing of statements before making the payments" there complained of, and affirmed the decree of the trial court, dismissing the subcontractor's intervening petition in which the latter sought to establish a lien against the owner's property.

If the failure of the owner to require the contractor to submit such a sworn statement, as is required by the statute, before making any payments to the contractor, could not be held to have injured the subcontractor or rendered the owner's property subject to a subcontractor's lien, as admitted by counsel for Henrich & Co., and as held by the Supreme Court in the Berkshire case, supra, then, on the same theory, the failure of the owner to require the contractor to submit further sworn statements before making the subsequent payments to the contractor, could not be held to have injured the subcontractor or rendered the owner's property subject to a lien for the balance due the subcontractor, it appearing in the case at bar, as it did in the case cited, that the last time a statement was filed in accordance with the requirements of section five of the Act, the owner had on hand ample funds to pay the subcontractor's claim and ample funds to pay all the outstanding subcontractor's accounts as appeared by that sworn statement of the contractor, on which the owner had the right to rely.

If the subcontractor had filed the notice provided



The respondent made no reference to the respondent's claim  
and that the court had a right to rely on those statements  
and the court concluded that the respondent "was not in-  
jured in any way by the failure of the applicant (now)  
to make the filing of statements before making the payment."  
The court explained at, and affirmed the basis of the trial court,  
concluding the respondent's intervention was not  
the latest motion to establish a lien against the property  
generally.

If the failure of the court to require the respondent  
to make the filing of statements was a wrong statement, it is required by  
the statute, before making any payment to the respondent,  
and it is held to have injured the respondent for two  
reasons: first, the respondent's property subject to a respondent's  
lien, as defined by section 100, is a lien, and it is held  
by the respondent in the respondent's name, and it is  
the respondent's, the failure of the court to require the respondent  
to make the filing of statements before making the  
payment to establish the respondent's lien, and it is held to  
have injured the respondent for two reasons: first, the respondent's  
property subject to a lien for the claimant and the respondent,  
it appeared in the case at bar, as it did in the case at bar,  
that the respondent's claim was filed in accordance with  
the requirements of section 100 of the Act, the court had  
to find the respondent liable to pay the respondent's claim and  
the court to pay all the outstanding respondent's  
amounts as required by the court's order of the respondent.

for by the Act, with the owner, at any time before the owner had paid out its money, it could have protected its claim. It failed to do but chose to rely on the contractor. The latter made a sworn statement which was false. The owner had the right to rely on that statement and assume that the subcontractor had been paid in full and proceed to pay out the balance in its hands.

For the reasons stated and on the authority of the decisions referred to, we hold that such payments as the owner may have made prior to the submitting of the contractor's last sworn statement, cannot be said to have injured the subcontractor, and that the failure of the owner to require further sworn statements at the times those payments were made, cannot have the effect of subjecting the owner's property to a lien in favor of Henrich & Co., nor can the final payment made by the owner have any such effect, for it was made on the faith of a contractor's sworn statement on which the owner was entitled to rely.

The decree appealed from is, therefore, affirmed.

DECREE AFFIRMED.

O'CONNOR, P.J. AND TAYLOR, J. CONCUR.



that by the fact with the intent, at any time before the death  
 had said that the money, it would have been paid for the  
 it failed to do the same to say in the evidence. The  
 before made a very strong statement with the fact. The court said  
 the right to say in that statement and answer that the right  
 evidence had been paid in full and refused to say that the  
 balance in the hands.

But the woman stated and in the authority of the  
 decision related to, we said that each person in the case  
 may have made prior to the admission of the woman's  
 last words statement, cannot be said to have related the  
 statement, and that the failure of the court to receive from  
 that source statements as the other three persons were made,  
 cannot have the effect of prejudicing the woman's property  
 as a fact in favor of herself. It is not the fact that she  
 made by the court that any such effect, but it was made in the  
 fact of a statement's being made in such the same  
 was related in this.

The court decided that it is, therefore, sufficient.

THE COURT DECIDED THAT IT IS, THEREFORE, SUFFICIENT.

THE COURT DECIDED THAT IT IS, THEREFORE, SUFFICIENT.

147 - 38799

ATWOOD-STEWART VACUUM MACHINE CO.,  
a corp.,

Appellee,

v.

BAYUK BROS., INC.,

Appellant.

3886  
234 I.A. 640

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

Opinion filed June 25, 1924.

MR. JUSTICE THOMSON delivered the opinion of the court.

The plaintiff Atwood-Stewart Vacuum Machine Company, brought this action to recover the purchase price of a vacuum cleaner system installed in the factory of Bayuk Bros., Inc., the defendant, under the terms of a contract into which the parties had entered. The issues were submitted to the trial court without a jury, resulting in a finding for the plaintiff and judgment in its favor in the sum of \$2700. To reverse that judgment the defendant has perfected this appeal.

The contract between the parties consisted of a written proposal submitted in the form of a letter from the plaintiff to the defendant, and the written communication of the defendant in reply, accepting the proposal, as specified in the plaintiff's letter. The material part of the plaintiff's proposal is contained in the sentence, "we further guarantee that this plant as installed by us will give you satisfactory service and will separate the fine dust from the tobacco." The vacuum system covered by this contract was in-





stalled in a cigar factory, operated by the defendant in the City of Philadelphia.

By its affidavit of merits the defendant alleged that the vacuum cleaner system, installed by the plaintiff did not comply with the terms of the contract and did not give satisfactory service to the defendant, in that it did not do the work for which it was installed; and did not pick up the tobacco and dust from the cigar floor, and did not separate the fine dust from the tobacco, but in taking up the tobacco and dust from the cigar floor, the system destroyed the tobacco so that when the tobacco reached the receptacles provided for receiving it, "all the materials thus taken up were reduced to dust, and there was thereby destroyed the tobacco thus picked up, which was a valuable by-product." The affidavit of merits further set forth that the plaintiff had been notified that the vacuum system was not satisfactory and it had failed and refused to make it work in a satisfactory manner, for the purpose for which it was intended, wherefore, the defendant alleged that it was not indebted to the plaintiff in any sum.

Whether the contract be considered as an Illinois or a Pennsylvania contract, the remedies open to the defendant by reason of the alleged breach of contract on the part of the plaintiff, were the same. The Illinois Statute provides, (Oahill's Ill. Statutes, ch. 181a, par. 78) that where there is a breach of warranty by the seller, the buyer may, at his election, "(a) accept or keep the goods and set up against the seller the breach of warranty, by way of recoupment, in diminution or extinction of the price; (b) accept or keep the





goods and maintain an action against the seller, for damages for breach of warranty; (c) refuse to accept the goods if the property therein has not passed and maintain an action against the seller for damages for the breach of warranty, or (d) rescind the contract to sell or the sale and refuse to receive the goods, or if the goods have already been received, return them or offer to return them to the seller and recover the price or any part thereof which has been paid." The statutes of Pennsylvania contain similar provisions. It is apparent that the defendant in the case at bar, claiming a breach of warranty on the part of the plaintiff, elected to pursue the course provided for in Paragraph (a), as above quoted. That is the theory adopted by the defendant in the affidavit of merits and on which the defendant put in its case on the trial.

If the finding of the trial court for the plaintiff was based on the conclusion that the vacuum cleaner system, as installed by the plaintiff fulfilled the terms of the contract and that there had been no breach of warranty, we are of the opinion that this court could not say, from the evidence in the record, that such conclusion was against the manifest weight of the evidence. By the terms of the warranty the plaintiff guaranteed that the plant, as installed, would give the defendant "satisfactory service." In our opinion a warranty in that language may not be construed as constituting the buyer as the sole judge of whether the service given is satisfactory. But even if the guaranty should be given that construction, we are further of the opinion that the buyer in such an event, could not refuse to pay for the system on the ground that the service it gave was not satisfactory, and thus defeat an action



goods and maintain an active system of selling, for instance, the goods of Germany; (2) unless he knows the goods in the country which has not passed and which he wishes to sell, he cannot sell them for the purpose of Germany; or (3) the seller has changed for the purpose of Germany, or (4) the contract is not on the whole and not on the whole the goods, or if the goods have already been rejected, return them or allow to return them to the seller and return the system or any part thereof which has been sold. The system of Germany is similar to the system of Germany. It is similar to the system of Germany in the case of Germany, allowing a system of Germany on the part of the plaintiff, allowed to return the goods provided for in Germany (4), as above stated. That is the theory adopted by the defendant in the attempt to return and to return the defendant has in the case on the trial.

If the finding of the trial court for the plaintiff was based on the evidence that the system of Germany, as stated by the plaintiff, fulfilled the terms of the contract and that there had been no breach of contract, we are of the opinion that this court could not say, from the evidence in the record, that such conclusion was against the weight of the evidence. If the court in the contract the plaintiff, as stated, that the system, as stated, would give the defendant "entirely satisfactory service." If the system is satisfactory, that language may not be considered as constituting the return as the sale of the goods for service given in satisfaction. But even if the plaintiff should be given that satisfaction, we are of the opinion that the system is such as to give the defendant the return for the goods in the contract that the

by the seller for the purchase price, unless it could substantiate its position with a reason or reasons which the court or jury would consider reasonable. Duplex Safety Boiler Co. v. Gardner, 101 N.Y. 387; Keeler v. Clifford, 165 Ill. 544. In our opinion the circumstances disclosed by the evidence in this record are not sufficient to make out a defense to the plaintiff's claim.

It appears from the evidence that the only operation of the vacuum cleaner system by the defendant, was an operation lasting two or three hours, for the purpose of testing the system, shortly after it was installed; and a second brief operation on the Thursday prior to the trial of this case, the latter being for the purpose of securing exhibits to be submitted at the trial. These exhibits which were introduced at the trial, were three in number. Exhibit 1, consisted of tobacco as it came from the floor of the defendant's factory by means of hand sweeping, which had been the system of cleaning used by the defendant prior to the installation of this system, to take the place of which this system had been installed. Exhibit 2, consisted of tobacco which had been taken from the tank installed by the plaintiff in connection with the vacuum system, which was "supposed to separate the dust from the tobacco." Exhibit 3, apparently consisted of tobacco removed from the floor, by the hand sweeping process, and then separated from the dust which had been gathered up with it, by means of sieves. The guaranty given by the plaintiff in connection with the installation of this system, was that it would "separate the fine dust from the tobacco." In our opinion it could not be said from the evidence in the record that the system in-





stalled by the plaintiff failed in respect to that guaranty. We are not able to determine, from any evidence in the record, as to just what could be said to be included in the term "fine dust." Apparently the defendant was interpreting it to include tobacco broken up into small particles, and the plaintiff, on the other hand, did not so understand the term, and the evidence in the record is such as to show that the defendant had never represented to the plaintiff, prior to the making of the contract or the installation of the system, that it would be expected to do the work now contended for, giving that definition to the term "fine dust." If we are to take the phrase referred to, as meaning what the words themselves signify, we do not deem that the evidence shows that the system failed to separate the tobacco from the dust, in the receptacle in which the tobacco was deposited. One of the witnesses for the defendant was asked whether or not, from an examination of Exhibit 2, he could find any dust in the tobacco constituting that Exhibit, and he answered, "Well, I would not want to say that it is not there but I can't prove that it is." Another witness for the defendant testified that the vacuum system did not separate the dust from the tobacco. This witness was apparently considering "dust" as the tobacco which had been broken up into small particles. This witness testified that the tobacco was broken up and the dust not separated; that when he and a representative of the plaintiff tested the system out, the witness looked at the tank in which the system was supposed to deposit the tobacco, and "called attention to the fact that it was all broken up." Later, in his examination, this witness testified that "the condition of the tobacco after it was taken up through the vacuum plant, was practically all dust, at



applied by the witness failed in respect to that generally.  
 He was not able to determine, from any evidence in the case,  
 as to just what would be said to be included in the term "line  
 hand." Apparently the defendant was interrogating as to the  
 other common names for such small particles, and the witness  
 felt, on the other hand, did not so understand the term, and  
 the evidence in the record is such as to show that the defendant  
 had every opportunity for the plaintiff, prior to the making of  
 the contract to the installation of the system, that it would  
 be expected to do the work was contemplated for, giving that the  
 testimony to the term "line hand." It was not to take the witness  
 referred to, as assuming that the words themselves signify, or  
 as not being that the evidence shows that the system failed to  
 prevent the damage from the first, in the transaction in which  
 the system was installed. One of the witnesses for the defendant  
 was asked whether or not, from an examination of Exhibit B, he  
 would find any fault in the system constituting that system,  
 and he answered, "Well, I would not want to say that it is  
 not there but I don't know that it is." Another witness for  
 the defendant testified that the system system did not require  
 the part from the witness. This witness was apparently con-  
 sidering "not" as the system which had been broken up into  
 small particles. This witness testified that the system was  
 broken up and that was expected, that there is not a re-  
 construction of the plaintiff based on the system and the re-  
 sults found at the time in which the system was intended to  
 replace the system, and called attention to the fact that it  
 was all broken up. Later, in his examination, this witness

least seventy-five per cent of it." On cross-examination, this witness testified that what he understood by the word "dust" in dealing with tobacco, was "tobacco that was ground up fine."

On the question of the guaranty of the plaintiff that the vacuum system would give the defendant "satisfactory service," it is clear from the record that the defendant took the position that the system installed by the plaintiff did not give "satisfactory service," because the system broke up the tobacco, to a greater or less extent and did not leave it in the condition it was in as it was taken from the floor, as had been possible with the hand sweeping process, consisting of employees using brooms and shovels. At the close of the evidence the defendant submitted a motion for a finding in its favor and in connection with the discussion which took place before the court, with reference to the motion, counsel for the plaintiff asked counsel for the defendant, what he meant by "satisfactory service," in connection with his contention that the system as installed failed to give such service. In reply, counsel for the defendant said, "Would that be satisfactory service, to destroy the value of the tobacco that they were picking up and trying to preserve?" The evidence showed that the defendant gathered up this floor tobacco, as it might be termed, consisting of parts of tobacco leaves that fell to the floor from the machines, and ends of cigars that were chopped off by machines, and other similar waste tobacco. One witness testified that "the nature of the tobacco as it lay on the floor, is divided up \* \* \* into three different sizes, one called cuttings, which is the largest size, and then next





the scrap " \* " and then the dust." The cuttings consisted of parts of leaves, sometimes as much as a quarter of a leaf, a leaf running from sixteen to twenty inches in length. The evidence further was to the effect that these three sizes of waste tobacco were a by-product of the factory, and were sold - the cuttings at 24 cents a pound, the scrap at 22 cents a pound, and the dust at 3 cents a pound. It was apparently the position of the defendant that the vacuum system failed to give satisfactory service, because it failed to transport the waste tobacco from the floor to the tank without reducing the sizes of the pieces to comparatively small particles, which were of less value than the waste tobacco in larger pieces. This is apparently what counsel for the defendant had in mind when he asked whether "that would be satisfactory service, to destroy the value of the tobacco, they were picking up, and trying to preserve." In connection with this discussion, which took place upon the occasion of the motion of the defendant for a finding in its favor, the trial court observed that from the plaintiff's evidence it did not appear that the plaintiff, by its contract guaranteed that the vacuum system would take up the waste tobacco and carry it to the tank, without breaking up the pieces into smaller particles, and, in answer to this, counsel for the defendant stated "they guaranteed to do that very thing. Would we put in a machine to destroy tobacco, and call it satisfactory service? They guaranteed they would carry that tobacco up there (to the receiving tank) and leave it there in the condition that the hand sweepers would bring it up; that they could do it cheaper; that is what we contracted for exactly." In our opinion the



the survey " " and then the survey. The survey was made  
of water of water, sometimes as much as a survey of a foot,  
a foot running from sixteen to twenty inches in length. The  
evidence further was to the effect that there were signs of  
water between water a hypothesis of the survey, and were all  
- the survey at 14 miles a point, the survey at 15 miles a  
point, and the fact at 16 miles a point. It was apparently  
the position of the defendant that the survey was made at  
the survey at 16 miles a point, because it failed to mention  
the survey between the line of the survey and the survey  
The line of the survey is approximately equal to the  
which was at least 100 feet from the water between the survey  
line. This is apparently what caused the survey  
and in mind when he asked whether "and would be satisfactory  
order, as to the survey the value of the survey, they were then  
ing up, and trying to get it. In connection with this the  
survey, which had been made the position of the survey at  
the survey was a survey at 16 miles, the survey at 16 miles  
survey that the survey at 16 miles is all that was  
that was made, by the survey between the survey  
system would take up the water between and was 10 to 15  
feet, without breaking up the survey from water between  
and, in answer to this, counsel for the defendant stated "they  
agreed to do that very thing. Would we get to a position  
in the survey, and all is satisfactory except that they  
agreed that they would make the survey as they do the  
survey at 16 miles and there is no survey at 16 miles

defendant may not reasonably establish the fact that the plaintiff has failed in its guaranty, that the system, as installed, would render "satisfactory service" by showing that the system did not pick up the waste tobacco and transport it to the receiving tank in the same condition as it could be gathered up by the hand sweepers. There is no contradiction in the record, of the plaintiff's evidence, to the effect that at no time was it ever represented to them that such a result was to be required of the operation of its vacuum system. It is quite apparent that such a result could not reasonably be contemplated in contracting for the installation of such a system as the contract called for. The evidence shows that the opening in the vacuum machine was an inch and three quarters in extent and that a system of pipes extended from the tank, on an upper floor, to a lower floor, where the cigar machines were located, from which floor the waste tobacco was to be gathered; that this floor was about 140 feet long and that there were three "runs" of pipe that ran the full length of the building, at the ceiling, each of which contained four or five drops, coming down from the pipes at the ceiling to within about four feet from the floor, and the length of hose with the receiving device at the end, was attached to these drops, as the cleaning process went on from one area of the floor to the other. Witnesses for the plaintiff testified that when they went to Philadelphia to test the system out, the complaint was made that, as deposited in the receiving tank, the tobacco was broken up to such an extent as to lessen its value, and they explained to the defendant that in the very nature of the vacuum system, tobacco,



...that the system did not work up the same business and ...  
...is to the receiving bank in the same condition as it  
...would be returned up by the bank ... There is no ...  
...condition is the receipt, of the ...  
...the effect that at no time was it ever ...  
...this such a result was as to ...  
...the system ... it is ...  
...which was ...  
...installation of such a system as the ...  
...The ...  
...in ...  
...which ...  
...these, ...  
...the ...  
...about ...  
...that ...  
...at ...  
...others ...  
...and the ...  
...was ...  
...There ...  
...absolutely ...  
...that the system ...  
...is the receiving bank, the ...

in the forms to which reference has been made, as it lay upon the factory floor, could not be drawn into an inch and three quarter receiver, and moved through piping of considerable length, necessarily containing a number of angles, and be deposited in a receiving tank, and at the same time be retained in the same size and form as it was when picked up, and the defendant had never represented to the plaintiff that such a result was to be expected of this system, and that therefore, the guaranty which had been furnished had not been considered by the parties as contemplating any such result. We find no evidence in the record to the contrary or tending to indicate the contrary. For these reasons, we are of the opinion that this court, as above stated, could not say that a conclusion arrived at by the trial court, to the effect that there was no breach of guaranty by the plaintiff, was not warranted by the evidence or was against the manifest weight of the evidence.

But even if we were of the opinion that the evidence made out a breach of guaranty, we are of the further opinion that this judgment could not be disturbed. The defendant did not elect to rescind the contract or tender the vacuum system back to the plaintiff, but as pointed out, it elected to avail itself of the first remedy provided for by our statute, in the case of breach of warranty, namely, to keep the vacuum system and set up the breach of warranty against the plaintiff, by way of recoupment in diminution and extinction of the price, in whatever action the plaintiff might bring to recover that price. We find no evidence in the



in the same subject reference has been made, as to the  
 from the existing theory, which may be taken into account  
 and those current theories, and those through which it  
 completely insight, necessarily containing a number of  
 angles, and be dominated in a revolving form, and in the  
 same time be retained in the same time and time as it was  
 when placed up, and the elements had never represented in  
 the elements that such a result was to be expected of this  
 system, and that therefore, the quantity of the system  
 furnished but not been considered by the system as a whole  
 existing any more readily. In fact no system in the system  
 in the system of feeling as follows the quantity. In  
 these terms, as one of the system that this point, as  
 above stated, would not say that a conclusion arrived at by  
 the system itself, in the system that there was no doubt of  
 quantity of the elements, was not represented by the system  
 as was against the existing system of the system.

But even if we were of the system that the  
 evidence was not a result of quantity, as one of the system  
 that system that this system would not be retained.  
 The system that was then to receive the system as a whole  
 but the system system was in the system, but as system  
 not, it should be well known of the first system provided  
 for by the system, in the case of system of quantity system,  
 in which the system system and not in the system of quantity  
 against the system, by way of system in division

record sufficient to establish any tangible damages on that theory. We have already had occasion to refer to the evidence showing that the waste tobacco, as gathered up by the hand sweepers, was divided into three classes, which were sold at stated prices, but there is no evidence in the record as to the quantity of waste tobacco taken from the floor of this factory, each day or each week over any given period of time, nor is there any showing as to the quantities of each of the three alleged classes of such waste tobacco which was gathered. One witness for the defendant did state that to use this system would result in damages to the extent of \$200 per day to the defendant. However, there were no facts given in evidence to establish that conclusion, or from which any damages could be determined or allowed to the defendant by way of recoupment.

For the reasons stated the judgment of the Municipal Court is affirmed.

JUDGMENT AFFIRMED.

O'CONNOR, P.J. AND TAYLOR, J. CONCUR.





328 - 28984

MERCANTILE COMMERCIAL BANK,

Appellee,

v.

EDGAR G. SMITH, ET AL,

Appellants.)

3887a  
APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

234 I.A. 640

Opinion filed June 25, 1924.

MR. JUSTICE THOMSON delivered the opinion of the court.

By this appeal the defendants seek to reverse a judgment for \$45,804.38, recovered against them in the Municipal Court of Chicago by the plaintiff Mercantile Commercial Bank.

The plaintiff, to which we shall refer as the bank, is located in the City of Evansville, in the State of Indiana. The defendant Handelsman, was general manager of the Vendome Theatre, which was erected in that city, and both he and the defendant Smith were directors in the Vendome Theatre Company. In the summer of 1920, certain land was purchased on which to erect the Vendome Theatre, and in connection with that purchase, Handelsman borrowed from the bank, \$39,500, that money being used in connection with the purchase of the property, Handelsman giving his note for the amount of the loan. At this time, title to the land was placed in one, George, an agent of the bank, as trustee to secure the bank in the matter of the payment of this note. In June, 1921, the Vendome Theatre Company desired to float



1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

• **Calligraphy**

### Field and Laboratory

012. A.1488

091106Z JUN 78

The publisher has the honor to acknowledge the receipt of your letter of the 11th inst.

— 1998 —

Received 21 May 1993; accepted 24 June 1993

1992-1993

© 1999 by The McGraw-Hill Companies, Inc.

and in other fields as shown in Table 1.

THESE RESULTS WERE OBTAINED BY USING THE FOLLOWING DATA:

100-443887-100

Downloaded from <http://ajphaphysiol.phapublications.org/> on September 11, 2012

—all are in accordance with the above-mentioned facts and are

© 1997 Blackwell Science Ltd, *Journal of Internal Medicine* 241: 395–402

© 1997 by the copyright owner. All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage or retrieval system, without permission in writing from the copyright owner.

Downloaded At: 11:53 11 September 2009

1945-1946

... ..

Small, dark, and very old, the building is a relic of the city's early days.

THE UNIVERSITY OF CHICAGO PRESS

a bond issue for the purpose of erecting their building on the land which had previously been acquired, and in this connection it was necessary for the Theatre Company to acquire the title to the land. A company known as the Interstate Securities Corporation, had acted as the broker or fiscal agent of The Theatre Company, in the sale of its stock, and this corporation held a number of stock subscription notes and contracts. According to the evidence in the record, the defendant Mandelstam was a director of the Vendome Theatre Company at this time and Smith either was a director in the Company, at this time, or was made a director very soon thereafter.

In order to enable the Theatre Company to acquire the title to the property, an arrangement was consummated, whereby the bank's agent, George, conveyed the title to the Theatre Company and the indebtedness on Mandelstam's note was reduced to \$55,000, and that balance was paid to the bank by substituting, for Mandelstam's note, three other notes, two for \$20,000 each and one for \$15,000, signed by the two defendants Mandelstam and Smith. These notes recited the deposit of "sundry notes and contracts" with the bank, as collateral. Simultaneously with the delivery of these notes to the bank, or very shortly thereafter, a number of stock subscription notes and contracts, and also apparently other notes, were turned over to the bank, and at this time the Board of Directors of the Theatre Company adopted a resolution reciting the fact that the property, the title to which the company desired to acquire, was held in the name of George, as trustee, and that it was deemed desirable that the title be vested in





the Company, and then provided that "in consideration of Jacob Handelman and Edgar C. Smith executing notes to cover the amount due to the Mercantile Commercial Bank on account of advances made to Jacob Handelman for the acquisition of said title, the said Vendome Theatre Company hereby authorizes and directs the Interstate Securities Corporation to deliver, properly endorsed, to Jacob Handelman and Edgar C. Smith all such notes as said Interstate Securities Corporation now has in its possession in connection with the sale of the Vendome Theatre Company stock, to be held by said Mercantile Commercial Bank as collateral security for the payment of the notes as executed by Edgar C. Smith and Jacob Handelman."

Following this, the makers of these various subscription notes and contracts, which were turned over to the bank, made certain payments thereon, which were duly credited by the bank on the \$15,000 note of Handelman and Smith, and in December, 1921, the balance due on this \$15,000 note was paid to the bank and the two notes for \$30,000 each were taken up by the delivery of two new notes for \$30,000 each, both signed by the two defendants. The suit at bar, brought by the bank, was to recover the amount due on these two notes, with interest and attorney's fees.

The notes involved in this case, as well as those which preceded them, contain a number of provisions among which were the following: "We have transferred and delivered to the Mercantile Commercial Bank of Evansville, Indiana, as Collateral Security, for the payment of this and of any other liabilities of the under-signed to the said payee, \* \* \* the





following property, \* \* \* Sundry notes and contracts attached." The notes then contain provisions giving the bank the right, from time to time, to sell, "all or any part of said pledged property." They then provided that the bank was to have the right "at its discretion and in lieu of such sale to collect or cause to be collected or otherwise converted into money all or any part of said pledged, substituted, or additional property and securities." The notes were dated December 20, 1921, and by their terms were due 90 days thereafter. Each was for the sum of "Twenty Thousand Dollars and attorneys fees with interest from date at rate of 8 per cent per annum." They were executed at Evansville, Indiana.

By the affidavit of merits on which the cause went to trial, there were two defenses interposed by the defendants to the action brought against them on these notes: (1) that the notes, although on their face primary obligations, were, in reality, collateral notes given to secure the payment of the stock subscription notes and contracts which were turned over to the bank, and that the latter, rather than the notes sued upon, were the primary obligation, and that the bank had agreed to collect these stock subscription notes and thus satisfy the obligation to the bank, and cancel and return the two notes held as collateral. (2). That among the "sundry notes and contracts" turned over to the bank, was a note for \$23,500, executed by the Scarborough-Davies Company, and subsequent to the delivery of this note to the bank the latter had permitted an endorsement to be made upon it, which impaired its value and interfered with its collection and that therefore the defendants, being in the position of sureties, were dis-





charged, at least to the extent of the amount of that note.

Under the facts referred to it is clear that there was a good consideration for the defendants' notes. The bank gave up the position it held, with regard to the title of the property in question and caused that title to be conveyed to the Theatre Company, by its agent who had held the title in trust, to secure the bank in the matter of the repayment to it of the money which Handelsman had borrowed to make the purchase. That this consideration moved from the bank to the Theatre Company and not to the defendants is immaterial, and it would be so even as to the defendant Smith, though it appeared that he was not interested in the Theatre Company, at the time he originally joined with the defendant Handelsman in executing notes to the bank. A consideration moving from the payee of a note to a third party will be sufficient to support the note, but beyond this, it appears from the evidence in the record that Smith as well as Handelsman was interested in the Theatre Company and was made a director in that Company either before or shortly after he joined with Handelsman in executing notes to the bank, and it is to be presumed from the evidence in the record that he continued to be a director in the Theatre Company some months after that, when the notes in suit were executed by him and Handelsman together.

Testimony was given by the defendant Handelsman, to the effect that it was agreed between the parties that the subscription notes and contracts turned over to the bank were to be considered the prime obligation in the hands of the bank, and that the notes signed by him and Smith were to be treated



described at least in the course of the report of the committee.

Under the latter heading it is in fact that there was a great deal of discussion of the subject of the committee. The committee was on the point of being dissolved at the time of the meeting.

The committee in question had held its first meeting on the 10th of the month, and had held its second on the 11th. It was in fact the only meeting of the committee which was held on the 11th of the month.

The committee was in fact the only meeting of the committee which was held on the 11th of the month. It was in fact the only meeting of the committee which was held on the 11th of the month.

The committee was in fact the only meeting of the committee which was held on the 11th of the month. It was in fact the only meeting of the committee which was held on the 11th of the month.

The committee was in fact the only meeting of the committee which was held on the 11th of the month. It was in fact the only meeting of the committee which was held on the 11th of the month.

The committee was in fact the only meeting of the committee which was held on the 11th of the month. It was in fact the only meeting of the committee which was held on the 11th of the month.

as collateral to the subscription notes and contracts. In our opinion, that testimony was incompetent. It is strongly urged by the defendants that it was received without objection on the part of the plaintiff. In our opinion, an examination of the record, clearly shows that the plaintiff's objection to this testimony was properly made and preserved. While one of two or more parties to a promissory note may be permitted to testify that he signed the note in the capacity of a surety, and not as a maker, without violating the rule prohibiting the giving of testimony tending to vary or contradict the terms of a written instrument, parol evidence is not admissible to show that a note, which, by its express terms is a primary obligation secured by certain other notes, delivered to the payee as collateral security, was, in fact, a collateral note given to secure the payment of other notes referred to therein as collateral in their nature. Munford v. Tolson, 157 Ill. 259; Fairbank v. Merchants Natl. Bank, 132 Ill. 130.

But, even if the testimony of Handelsman were competent, it must, in our opinion, be held to have failed to establish the fact that the notes sued upon were collateral notes. For not only was such testimony directly contrary to the express provisions of the notes, but the record shows that just prior to the time the notes fell due, Handelsman himself took a position which was contrary to the testimony he gave in this case, for the record shows that at that time he wrote the bank asking it to "furnish us with a list of all notes deposited with you as collateral, in connection with the notes executed by myself and Mr. Smith." The testimony of Handelsman





was further contradicted by the resolution passed by the board of directors of the Theatre Company, of which Mandelsohn, if not Smith, also, was at that time a member, in which it was provided that the stock subscription notes and contracts were to be turned over to the bank to be held by it "as Collateral Security for the payment of the notes executed by said Edgar C. Smith and Jacob Mandelsohn." In addition to this, testimony was given by one Battin, who was called as a witness for the defendants, which tended to contradict that of Mandelsohn on this point.

As to the contention that it was the duty of the bank, treating the stock subscription notes and contracts to have been held by it as collateral, to collect those notes and thus reduce the obligation of the defendants, and that having failed to fulfill that duty, imposed upon it as the holder of those notes, the defendants should be considered as discharged from any obligation to the bank on their notes. Without regard to the question of what the evidence shows as to what was done or was not done by the bank, in the matter of the collection of the stock subscription notes, it is sufficient to note that under the express terms of the notes of the defendants, here sued upon by the bank, it was provided that the bank had "the right" to collect the stock subscription notes "at its discretion." The duties and obligations of a payee of a note containing a stipulation to that effect may certainly not be held to be those of the payee of an ordinary promissory note, with collateral.

With regard to the Scarborough-Davies note, it





appears that, as introduced in evidence this note bore an endorsement across the back of the note, signed by the Scarborough-Davies Company and by the Interstate Securities Corporation, reading as follows:

"It is hereby agreed that the Scarborough-Davies Company will apply a five per cent of their monthly estimate on this note, and the balance of this note to be deducted by the Vendome Theatre Company from the twenty per cent withheld by the Vendome Theatre Company according to the terms of the awarded general contract."

It appeared that the Scarborough-Davies Company had a contract for the construction of the Vendome Theatre. In our opinion the defendants failed to show that this was such an endorsement as could be held to relieve them from any obligation, under the notes sued upon. The three notes, two for \$20,000 each and one for \$15,000, originally executed by the two defendants, were dated June 28, 1931. In our opinion the evidence in the record fails to show that the endorsement on the Scarborough-Davies note was placed there after delivery to the plaintiff bank. The proof fails to show that this note, together with the other collateral notes which were delivered to the bank, were turned over to it at the time the principal notes were executed and delivered, on June 28, 1931, those principal notes being the predecessors of the two notes here sued upon. The Scarborough-Davies note was dated July 1, 1931, and there is also a date immediately preceding the endorsement on the back of the note, which date is also "July first, 1931." From all of the evidence in the record it would seem to be clear that this endorsement was on the note at the time it came into the hands of the plaintiff bank. We are further of the opinion that it is clear that the endorsement in question was not one



...the ... ..  
... ..  
... ..  
... ..

\*It is further stated that the respondents  
 United Company will only have one end in view  
 namely to acquire the assets of the respondents  
 and to be admitted to the control of the company  
 (see the report and the statement of the respondents  
 United Company submitted to the court by the respondents  
 United Company).

[illegible]

which impaired the value of the note or in any way affected its collection. It amounted to an assignment by the maker of the note to the payee, Interstate Securities Corporation, of certain funds, which were expected to become due to the maker from the Vendome Theatre Company on its contract. The face of the note contained an unqualified promise to pay the amount named and there is nothing in connection with the endorsement which limits or tends to limit the right to payment, to the fund or funds referred to in the endorsement.

The defendants make the further contention that the amount of the verdict is excessive and not supported by the evidence, inasmuch as no testimony was offered as to the amount of interest due on the notes nor as to the amount of attorney's fees the plaintiff would be entitled to recover; and no evidence was offered as to the amount of services rendered by the plaintiff's attorneys, or as to what those services were reasonably worth. Assuming such proof to be material on the issues made by the pleadings, the record fails to show that the point thus made was made in the trial court. The statement of claim filed by the plaintiff alleged, among other things, that the plaintiff was entitled to recover its reasonable attorney's fees, in the sum of \$2,000. The affidavit of claim filed by the plaintiff stated that there was due it from the defendants, the face of the notes with interest, "plus a reasonable attorney's fees of \$2,000." The affidavit of merits filed by the defendants made no reference to the claim for attorney's fees. In view of the terms of the notes executed by the defendants, each of which called for the payment of "Twenty Thousand Dollars and attorney's fees with interest from date, at the rate of 8 per cent per annum",





and in view of the pleadings to which we have referred, we are of the opinion that this court is not in a position to hold that the amount of the verdict is excessive.

At the close of the evidence, the plaintiff submitted a peremptory instruction in its favor, which the court allowed. For the reasons we have referred to, we are of the opinion that the court did not err in so doing. The judgment of the Municipal Court is, therefore, affirmed.

JUDGMENT AFFIRMED.

O'CONNOR, P.J. AND TAYLOR, J. CONCUR.



and in view of the foregoing it seems to have followed, we  
 have at the same time that this matter is not in a position to  
 hold that the matter of the matter is immaterial.

At the time of the matter, the matter is  
 almost a necessary condition in the matter, which the matter  
 allowed. The matter is not in a position to be in a position  
 of the matter and the matter is not in a position. The matter  
 of the matter is not in a position, which is not in a position.

THE MATTER IS NOT IN A POSITION.

THE MATTER IS NOT IN A POSITION.

3888a

UNITED STATES NATIONAL BANK,  
PORTLAND, OREGON, a corporation,  
Defendant in Error,

vs.

SAMUEL BAUMGART, doing business  
as Baumgart Wrecking & Lumber  
Company,  
Plaintiff in Error.

234 T.A. 640

ERROR TO  
MUNICIPAL COURT  
OF CHICAGO.

MR. PRESIDING JUSTICE FITCH  
DELIVERED THE OPINION OF THE COURT.

In 1920, the Coast Fir Lumber Company, of Portland, Oregon, sold two carloads of lumber to the defendant through the agency of the Acme Lumber & Shingle Company, of Chicago. At the time of such sales, the lumber was on railroad cars in transit from Oregon eastward, and the Acme Company had been furnished with a list of such cars and authorized by the Coast Fir Lumber Company to sell the lumber in such cars on a commission basis. The sale was made to the defendant over the telephone by one of the salesmen of the Acme Company. When defendant thus agreed to buy the lumber, the Acme Company wired the Coast Fir Lumber Company asking it to order the carrier to divert the cars and deliver the lumber therein to the defendant f.o.b. Chicago, which was done. When the first car arrived in Chicago, defendant accepted the lumber in it, paid the freight and charged the amount paid to the shipper. There is no dispute concerning that car load. In his affidavit of merits defendant admits that he owes for that carload a balance of \$640.64, after deducting freight charges paid by him. As to the other car, the affidavit of merits states that upon its arrival in Chicago, defendant refused to accept the



2888

012 14 640

MINISTER OF  
COMMERCIAL AFFAIRS  
OF CANADA

THE CHIEF OF THE  
CUSTOMS AND EXCISE  
DEPARTMENT

OTTAWA, CANADA  
JANUARY 10, 1900

RE: BREWERY LICENSES  
BREWING THE BEVERAGE OF THE COUNTRY

In 1890, the Great Northern Brewery, at Montreal,  
and the two breweries at Quebec in the following manner:  
agreed at the same time to license the brewery at Quebec,  
the first of such nature, the license was on condition that it  
should from Quebec brewery, and the same brewery had been  
granted with a list of such cases and regulated by the laws  
of the Province of Quebec to sell the liquor in such cases as a  
license holder. The sale was made to the brewery over the  
system by one of the members of the same brewery. When  
under that system to pay the license, the same brewery  
and the Great Northern Brewery would be to make the  
also to allow the same and allow the license holder to  
be licensed to sell liquor, which was done. From the first  
license in Quebec, following accepted the license in 1890,  
the license was changed the amount paid to the brewery  
to be on license amounting that was done. In the following  
written statement which was made the first of such a  
case at 1890-91, after deducting further charges paid by

lumber therein for the reason that it was not "No 1 Common White Fir lumber," as ordered; that thereupon "the said Coast Fir Lumber Company, through its agent, the said Acme Lumber & Shingle Company," requested defendant to unload such lumber and store it in defendant's lumber yard, "in order to save demurrage charges, until the matter could be adjusted, or otherwise disposed of by the said Coast Fir Lumber Company;" that defendant did as requested, paying the freight charges and unloading and storing the lumber in his yard; that he requested the Coast Fir Lumber Company "on numerous occasions" to remove the lumber from his yard, which it failed and refused to do; that finally he notified that company that unless the lumber was removed, defendant would sell it to pay the expense of unloading, and the freight and storage charges; that when said notice expired, defendant sold part of the lumber at the highest price he was able to obtain, and the rest of the lumber is still stored in his lumber yard; and that after deducting the amount admitted to be due on the first carload, and the amount received for what was sold out of the second shipment, there is a balance of \$22.75 due to the defendant. It appears that the Coast Fir Lumber Company assigned its account against defendant to the plaintiff. At the conclusion of the evidence, the court instructed the jury to return a verdict in favor of the plaintiff for \$2014.17, the full amount claimed by the plaintiff, including interest; and from a judgment thereon, defendant has brought this writ of error.

Upon the trial, defendant's counsel attempted to prove conversations of the defendant with the Acme Company's president and the salesman of that company who effected the sales, regarding the alleged rejection of the second carload of lumber and the subsequent disposition of it. Counsel for plaintiff objected,



The first of these is the fact that the defendant, who is a resident of the State of New York, has been found guilty of the crime of larceny, and has been sentenced to imprisonment for a term of years. The second is the fact that the defendant has been found guilty of the crime of larceny, and has been sentenced to imprisonment for a term of years. The third is the fact that the defendant has been found guilty of the crime of larceny, and has been sentenced to imprisonment for a term of years.

upon the ground that such conversations were inadmissible unless it was first shown that the Acme Company had authority to bind the seller by arranging for the disposition of the rejected lumber. The court sustained the objection. Defendant's counsel then attempted and offered to prove such authority by showing the previous course of dealing between the Coast Fir Lumber Company and the Acme Company in other like transactions, and to prove that there was a general custom in the lumber trade in Chicago to refer disputes as to the grade of lumber received on shipments of this character to the inspector of the lumbermen's association, which was an organization of wholesale and retail lumber dealers and brokers, in Chicago. The court sustained objections to such testimony and to the questions and offers of defendant's counsel.

We are of the opinion that the court erred in excluding the offered evidence for the reasons stated in Huas Lumber Co. v. Marty Bros. & Marty Co., 169 Ill. App. 323 (a case in which the facts were remarkably similar to the facts of this case), and First National Bank v. Hogg-Morris Lumber Co., 181 Ill. App. 220. The record shows that upon the trial, the latter case was called to the attention of the court, and that the court apparently declined to follow it. We think it was in point and correctly states the rule in this state that contracts like those involved in this case, made in the ordinary course of business, without particular stipulations, are presumed to be made in reference to any existing usage or custom in the trade, and that persons dealing therein will be held as intending that the business should be conducted according to such general usage and custom.

Plaintiff's counsel say that the Acme Company was "an agent merely to solicit offers to be transmitted to its principal at Portland for acceptance or rejection there," and that "there is no proof of any other or further authority in



The Government has been very successful in its efforts to suppress the opium trade in China. The Government has been able to reduce the consumption of opium by more than one-half since 1906. This has been accomplished by a combination of measures, including the establishment of a monopoly over the production and sale of opium, the imposition of heavy taxes on the cultivation and sale of opium, and the enforcement of strict laws against the possession and use of opium.

[illegible]

this record." Naturally, there is no such proof in the record, because objections were sustained to the offered proof. In answer to a statement made by defendant's counsel, the court said: "You can't prove agency through the agent." While the declarations of one assuming to act as an agent are not admissible to prove his agency (Merchants' National Bank v. Nichols, 233 Ill. 41), yet the alleged agent is a competent witness to testify to facts which tend to prove his agency. (21 R. C. L. 821; Thayer v. Meeker, 86 Ill. 470, 473; P. C. C. & St. L. Ry. Co. v. Gage, 286 Ill. 213, 220; Phillips v. Foulter, 111 Ill. App. 330.) Furthermore, it was admitted by the plaintiff that the Home Company was the agent of the Coast Fir Lumber Company for certain purposes in the sale of its lumber, and in the case of Faber-Masuer Co. v. Am. E. Dec Clay Mfg. Co., 291 Ill. 240, 246, it was held that where such is the fact, the declarations of the agent are admissible against the principal to show the extent of his authority as such agent. The trial court took the view that defendant had accepted the lumber by taking it from the car to his yard and afterwards selling part of it. If the facts were as stated in the affidavit of merits, there was no acceptance, and defendant had the right to prove such facts. The authority of an agent in such cases may be shown to have been expressly given, or it may be applied from such facts and circumstances as were attempted to be shown in this case.

For the reasons stated, the judgment of the Municipal Court is reversed and the cause remanded.

REVERSED AND REMANDED.

Arnold and Gridley, JJ., concur.



[illegible]

LOUIS E. KAUFMAN,  
Appellee,

vs.

MAURICE W. GORDON,  
Appellant.

3889a  
234 I.A. 641

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

MR. PRESIDING JUSTICE FITCH  
DELIVERED THE OPINION OF THE COURT.

By this appeal the defendant seeks to reverse a judgment against him for possession of certain premises in Chicago occupied by him as a drug store. After the summons was served a paper was filed by defendant's attorney stating that the attorney enters the appearance of the defendant for the purpose of moving the court to abate the action until a decision is rendered in a chancery suit then pending in the Circuit Court of Cook County for specific performance of a verbal lease involving the same premises and parties. On the trial plaintiff proved that he was entitled to possession by virtue of a written lease from the owner and of a sixty days notice to quit. The defendant made no defense other than to move the court to abate the suit, which motion was overruled, and thereupon judgment was entered against him.

Defendant claims that his special appearance "questioned the jurisdiction of the court." We find nothing to that effect in the written appearance. The most that can be said of it is that it might be considered, under the practice prevailing in the Municipal Court, as a plea in abatement on the ground of a prior suit pending in chancery. But it was not shown that an injunction was granted in such prior suit, and



[illegible]

Belgium also has a small number of

... ..

See also: [Ferry Boat](#), [Navigation](#), [Ship](#), [Traffic](#)

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED DATE 05/24/2011 BY 60322 UCBAW

THE UNIVERSITY OF CHICAGO PRESS

Bar not at all - extremely at various times under a 100

the rule is that where no injunction has been issued, the pendency of such a suit can not operate to abate a later suit at law between the same parties. (Evans v. Linsie, 55 Ill. 488; Shepardson v. McBale, 49 Ill. App. 350, 354.)

The judgment is affirmed.

AFFIRMED.

Barnes and Gridley, JJ., concur.



[illegible]

WILLIAM KATZMANN,  
Appellant,

vs.

MRS. D. C. HUMSBY et al.,  
Appellees.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

234 I.A. 641

MR. PRESIDING JUSTICE FITCH

DELIVERED THE OPINION OF THE COURT.

Complainant, who holds a lease for a term of fifteen years of three stores in Chicago, which she had occupied for nine years, filed a bill to enjoin a threatened cancellation of her lease and to compel a specific performance of the same, according to her construction of its terms. A preliminary injunction was issued, answers were filed to the bill and the principal defendants, Joseph Rosenberg, Samuel Denian, Julian Demash and Victor C. Masterlik, who are the present owners of the lessor's interest, filed their amended cross-bill alleging that the provisions of complainant's lease regarding the payment of rent for the last six years of the term are uncertain and asking the court to fix the amount to be paid. Upon a hearing in open court a decree was entered dissolving the temporary injunction, but recognizing complainant's right to retain possession for the full term of her lease and fixing her rent for the remaining six years thereof at one rate for the first year and at another and higher rate thereafter. Complainant appeals.

The record discloses the following facts. In 1913, Mrs. Alice C. Humsby owned a block of land on East 63rd street, in Chicago, which was improved with a one-story brick building containing thirteen store rooms, leased to various tenants. On March 6, 1913, Mrs. Humsby executed a lease to William Katzmann



ISS. ALIEN

[illegible]

for three of such store rooms, known as 945, 947 and 949 East 63rd street, for a term of fifteen years, beginning May 1, 1913, and ending April 30, 1928. This lease contained the following provision regarding the payment of rent for said three stores:

"To pay as rent for said demised premises the sum of Seventeen Thousand Eight Hundred Twenty (\$17,820.00) Dollars for the first nine years; the price for the remaining six years is to be the same price per store as is paid for the stores known as Nos. 941-1001 and 1003 E. 63rd St.; payable 36 installments of \$150.00 each, 36 installments of \$165.00 each, and 36 installments of \$180.00 each; next 72 installments in proportion to other inside stores as above, each in advance, upon the first day of each and every month of said term at the office of McKey & Peague, 1206 E. 63rd St."

Under this lease, William Katmann occupied the demised premises until his death in 1915, and his widow, who was the sole devisee of his estate and is the complainant, has occupied the same since her husband's death. Alice G. Rumsey died in 1915 and by her last will and testament she devised all her property to her husband, George D. Rumsey.

In April, 1921, George D. Rumsey sold the whole block of buildings to Dean R. Phillips for \$30,000, and gave him a ninety-nine years lease of the ground at a rental of \$12,000 a year. On March 10, 1922, Phillips sold and transferred his interest in the leasehold estate and buildings to the principal defendants above named. At the time of this transfer, 941 East 63rd street was occupied by Mark Van Gelder, who was paying \$80 per month under a two years lease from George D. Rumsey expiring April 30, 1922; 1001 East 63rd street was occupied by Max Kahn, he was paying \$25 per month under a similar lease expiring April 30, 1922; and 1003 East 63rd street was occupied by Morris Bloom, he was paying \$60 per month under a two years lease which expired April 30, 1922. During the negotiations between Phillips and said defendants for the sale of the ninety nine years leasehold, Kahn and Van Gelder were induced to surrender their leases and execute



There is one more thing to be said about the *Journal of the American Medical Association*. It is the only journal in the field that has a "Letter to the Editor" section. This section is a place where readers can express their views on the articles in the journal. It is a valuable feature that allows for a more open and honest discussion of the issues at hand.

1961, I was submitted, every month, to read a well, (over)

CONFIDENTIAL - NO DISSEMINATION TO THE PUBLIC - EYES ONLY

© 2000 by John Wiley & Sons, Inc.

THE UNIVERSITY OF CHICAGO PRESS

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a message of condolence to the people of the State of California, who had recently suffered from a severe earthquake. The President expresses his sympathy for the victims and offers his prayers for their recovery.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 10-10-2001 BY 60322 UCBAW

§ 101.101. The purpose of this chapter is to provide a framework for the development of a system of public health services for the people of the State of New York.

1. Small, and large, numbers all have a value in people

1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Arar and Collins (1971).

THESE ARE THE RESULTS OF THE STUDY

1960-1961, 1962-1963, 1964-1965, 1966-1967, 1968-1969, 1970-1971, 1972-1973, 1974-1975, 1976-1977, 1978-1979, 1980-1981, 1982-1983, 1984-1985, 1986-1987, 1988-1989, 1990-1991, 1992-1993, 1994-1995, 1996-1997, 1998-1999, 2000-2001, 2002-2003, 2004-2005, 2006-2007, 2008-2009, 2010-2011, 2012-2013, 2014-2015, 2016-2017, 2018-2019, 2020-2021, 2022-2023, 2024-2025, 2026-2027, 2028-2029, 2030-2031, 2032-2033, 2034-2035, 2036-2037, 2038-2039, 2040-2041, 2042-2043, 2044-2045, 2046-2047, 2048-2049, 2050-2051, 2052-2053, 2054-2055, 2056-2057, 2058-2059, 2060-2061, 2062-2063, 2064-2065, 2066-2067, 2068-2069, 2070-2071, 2072-2073, 2074-2075, 2076-2077, 2078-2079, 2080-2081, 2082-2083, 2084-2085, 2086-2087, 2088-2089, 2090-2091, 2092-2093, 2094-2095, 2096-2097, 2098-2099, 2100-2101, 2102-2103, 2104-2105, 2106-2107, 2108-2109, 2110-2111, 2112-2113, 2114-2115, 2116-2117, 2118-2119, 2120-2121, 2122-2123, 2124-2125, 2126-2127, 2128-2129, 2130-2131, 2132-2133, 2134-2135, 2136-2137, 2138-2139, 2140-2141, 2142-2143, 2144-2145, 2146-2147, 2148-2149, 2150-2151, 2152-2153, 2154-2155, 2156-2157, 2158-2159, 2160-2161, 2162-2163, 2164-2165, 2166-2167, 2168-2169, 2170-2171, 2172-2173, 2174-2175, 2176-2177, 2178-2179, 2180-2181, 2182-2183, 2184-2185, 2186-2187, 2188-2189, 2190-2191, 2192-2193, 2194-2195, 2196-2197, 2198-2199, 2200-2201, 2202-2203, 2204-2205, 2206-2207, 2208-2209, 2210-2211, 2212-2213, 2214-2215, 2216-2217, 2218-2219, 2220-2221, 2222-2223, 2224-2225, 2226-2227, 2228-2229, 2230-2231, 2232-2233, 2234-2235, 2236-2237, 2238-2239, 2240-2241, 2242-2243, 2244-2245, 2246-2247, 2248-2249, 2250-2251, 2252-2253, 2254-2255, 2256-2257, 2258-2259, 2260-2261, 2262-2263, 2264-2265, 2266-2267, 2268-2269, 2270-2271, 2272-2273, 2274-2275, 2276-2277, 2278-2279, 2280-2281, 2282-2283, 2284-2285, 2286-2287, 2288-2289, 2290-2291, 2292-2293, 2294-2295, 2296-2297, 2298-2299, 2300-2301, 2302-2303, 2304-2305, 2306-2307, 2308-2309, 2310-2311, 2312-2313, 2314-2315, 2316-2317, 2318-2319, 2320-2321, 2322-2323, 2324-2325, 2326-2327, 2328-2329, 2330-2331, 2332-2333, 2334-2335, 2336-2337, 2338-2339, 2340-2341, 2342-2343, 2344-2345, 2346-2347, 2348-2349, 2350-2351, 2352-2353, 2354-2355, 2356-2357, 2358-2359, 2360-2361, 2362-2363, 2364-2365, 2366-2367, 2368-2369, 2370-2371, 2372-2373, 2374-2375, 2376-2377, 2378-2379, 2380-2381, 2382-2383, 2384-2385, 2386-2387, 2388-2389, 2390-2391, 2392-2393, 2394-2395, 2396-2397, 2398-2399, 2400-2401, 2402-2403, 2404-2405, 2406-2407, 2408-2409, 2410-2411, 2412-2413, 2414-2415, 2416-2417, 2418-2419, 2420-2421, 2422-2423, 2424-2425, 2426-2427, 2428-2429, 2430-2431, 2432-2433, 2434-2435, 2436-2437, 2438-2439, 2440-2441, 2442-2443, 2444-2445, 2446-2447, 2448-2449, 2450-2451, 2452-2453, 2454-2455, 2456-2457, 2458-2459, 2460-2461, 2462-2463, 2464-2465, 2466-2467, 2468-2469, 2470-2471, 2472-2473, 2474-2475, 2476-2477, 2478-2479, 2480-2481, 2482-2483, 2484-2485, 2486-2487, 2488-2489, 2490-2491, 2492-2493, 2494-2495, 2496-2497, 2498-2499, 2500-2501, 2502-2503, 2504-2505, 2506-2507, 2508-2509, 2510-2511, 2512-2513, 2514-2515, 2516-2517, 2518-2519, 2520-2521, 2522-2523, 2524-2525, 2526-2527, 2528-2529, 2530-2531, 2532-2533, 2534-2535, 2536-2537, 2538-2539, 2540-2541, 2542-2543, 2544-2545, 2546-2547, 2548-2549, 2550-2551, 2552-2553, 2554-2555, 2556-2557, 2558-2559, 2560-2561, 2562-2563, 2564-2565, 2566-2567, 2568-2569, 2570-2571, 2572-2573, 2574-2575, 2576-2577, 2578-2579, 2580-2581, 2582-2583, 2584-2585, 2586-2587, 2588-2589, 2590-2591, 2592-2593, 2594-2595, 2596-2597, 2598-2599, 2600-2601, 2602-2603, 2604-2605, 2606-2607, 2608-2609, 2610-2611, 2612-2613, 2614-2615, 2616-2617, 2618-2619, 2620-2621, 2622-2623, 2624-2625, 2626-2627, 2628-2629, 2630-2631, 2632-2633, 2634-2635, 2636-2637, 2638-2639, 2640-2641, 2642-2643, 2644-2645, 2646-2647, 2648-2649, 2650-2651, 2652-2653, 2654-2655, 2656-2657, 2658-2659, 2660-2661, 2662-2663, 2664-2665, 2666-2667, 2668-2669, 2670-2671, 2672-2673, 2674-2675, 2676-2677, 2678-2679, 2680-2681, 2682-2683, 2684-2685, 2686-2687, 2688-2689, 2690-2691, 2692-2693, 2694-2695, 2696-2697, 2698-2699, 2700-2701, 2702-2703, 27

and Delaney and Grunwaldt all of New York City in 1966.

© 1999 by John Wiley & Sons, Inc.

BY MAIL WILL NOT BE RECORDED THE FOLLOWING DAY

1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 26

1944-1945

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

U.S. DEPARTMENT OF AGRICULTURE

THE UNIVERSITY OF CHICAGO

... ..

[illegible]

2000年12月15日

1. The first of these is the fact that the majority of the population of the United States is now living in urban areas. This is a result of the process of urbanization, which has been going on since the beginning of the 20th century. The population of the United States has increased from about 100 million in 1900 to over 200 million in 1950. At the same time, the population of rural areas has decreased from about 100 million in 1900 to about 50 million in 1950. This has led to a concentration of the population in urban areas, which has had a number of important consequences. One of the most important is that it has led to a change in the way of life of the majority of the population. In rural areas, the population has traditionally been engaged in agriculture, and the way of life has been based on the needs of the farm. In urban areas, the population has traditionally been engaged in industry and commerce, and the way of life has been based on the needs of the city. This has led to a number of differences between the two ways of life, including differences in the types of housing, the types of food, and the types of entertainment. These differences have led to a number of problems, including the problem of housing, the problem of food, and the problem of entertainment. The problem of housing is particularly acute in urban areas, where the population is concentrated in a small area. The problem of food is also acute in urban areas, where the population is concentrated in a small area. The problem of entertainment is also acute in urban areas, where the population is concentrated in a small area. These problems have led to a number of efforts to improve the way of life in urban areas, including efforts to improve housing, to improve food, and to improve entertainment. These efforts have led to a number of improvements, but there is still a long way to go. The second of the two main reasons for the concentration of the population in urban areas is the fact that the majority of the population of the United States is now living in the South and West. This is a result of the process of migration, which has been going on since the beginning of the 20th century. The population of the United States has increased from about 100 million in 1900 to over 200 million in 1950. At the same time, the population of the North and East has decreased from about 100 million in 1900 to about 50 million in 1950. This has led to a concentration of the population in the South and West, which has had a number of important consequences. One of the most important is that it has led to a change in the way of life of the majority of the population. In the North and East, the population has traditionally been engaged in industry and commerce, and the way of life has been based on the needs of the city. In the South and West, the population has traditionally been engaged in agriculture, and the way of life has been based on the needs of the farm. This has led to a number of differences between the two ways of life, including differences in the types of housing, the types of food, and the types of entertainment. These differences have led to a number of problems, including the problem of housing, the problem of food, and the problem of entertainment. The problem of housing is particularly acute in the South and West, where the population is concentrated in a small area. The problem of food is also acute in the South and West, where the population is concentrated in a small area. The problem of entertainment is also acute in the South and West, where the population is concentrated in a small area. These problems have led to a number of efforts to improve the way of life in the South and West, including efforts to improve housing, to improve food, and to improve entertainment. These efforts have led to a number of improvements, but there is still a long way to go.

THE UNIVERSITY OF CHICAGO

THE UNIVERSITY OF CHICAGO

[illegible]

new ones expiring April 30, 1923, ostensibly requiring the payment of \$200 per month rent for each of their stores. This was accomplished by the payment in cash to each of them of the difference between the rent reserved in the old lease and that reserved in the new one. These payments were made by the agents of Phillips, and by agreement, part of the amounts so paid was included in the price paid by the principal defendants for the purchase of the leasehold estate.

Shortly after acquiring the Phillips leasehold, the defendant Rosenberg and his associates executed a lease of 1003 East 63rd street to Ellis Gardner for a term of five years beginning May 1, 1922, at a rental of \$300 per month. Gardner occupied the store for nine months and then vacated it, whereupon the lessors made a new lease of that store to one Cunningham for the unexpired term of the Gardner lease at the same rental; and Cunningham was in possession thereof at the time this case was heard in the trial court in April, 1923. When this lease was made to Cunningham, he was a tenant in possession of 939 East 63rd street, one of the stores in the same block, for which he was paying \$60 per month rent under a lease ending April 30, 1923; and Joseph Rosenberg testified that Cunningham not only surrendered that lease, but also paid \$750 back rent which had accrued on the Gardner lease.

The evidence shows that after said defendants acquired the Phillips leasehold, no lease of any store in the block was made by them for a stipulated rental of less than \$300 a month, and that in some cases, where defendants agreed to make alterations or additions to the premises, leases were made on a rental basis in excess of that amount.

When the Phillips leasehold estate was transferred, notice of the transfer was sent to all of the tenants, who were notified that Rosenberg was entitled to the rents after





April 1, 1922. The notice given to the complainant was contained in a letter from Joseph Rosenberg, dated March 16, 1922, in which she was advised that all rents beginning April 1, 1922, would be due and payable at his office. This was followed by a letter to the complainant dated March 28, 1922, and signed by all of the four principal defendants, stating that the provision of her lease "relating to rent for said premises for the next six years is so vague and indefinite that it is void and we do not recognize your tenancy of said premises after April 30th, 1922;" that if she agreed with them in this construction of the lease, she was "at liberty to remove" on April 30, 1922; or they would be willing to have her remain in possession "for a further term of six years, upon the condition, however, that you shall pay us at the rate of \$300 per month for each of the stores \* \* \* which is the fair, reasonable value of said premises." To this letter complainant did not reply. She replied to the first letter by mailing a check for her April rent on April 1, 1922, to Joseph Rosenberg at his office. On April 3, 1922, he returned her check and letter, "because of your failure \* \* \* to pay the rent on April 1st, and for the further reason that I do not care to accept your checks, the rent being payable in money." Complainant then tendered the currency to Rosenberg at his office. He refused the tender, and brought suit in forcible detainer, but upon a trial took a nonsuit and accepted the tender. Thereupon complainant filed her bill.

The decree finds that complainant's lease "constitutes demise" of the premises therein described for a period of fifteen years; that for the first nine years the rental is specified in the lease, but for the last six years the rental is dependent upon the rent paid for the three stores known as 941, 1001 and 1003 east 63rd street. Then, after finding the facts regarding the uses of these stores, substantially as hereinabove stated (except





that only the original leases to Van Gelder and Kahn are mentioned - all mention of the substituted leases being omitted from the decree), the decree finds that "it is now possible to fix and determine the rental" for complainant's premises for the period beginning May 1, 1922, and ending April 30, 1929; that for the year ending April 30, 1923, complainant should pay the same amount as the aggregate rental reserved in the Van Gelder, Kahn and Gardner-Cunningham leases above mentioned, which the court finds to be \$465 a month; that for the next four years, complainant should pay \$808 per month, based upon the leases thereafter made of 941, 1001 and 1003 East 63rd street, after deducting from the rental reserved in the lease of 941 East 63rd street the sum of \$4,000 for the cost of improvements required by the lease to be made by the lessors. The decree further finds that the amount of rent to be paid by the complainant for the last year of the term of her lease cannot be definitely ascertained at this time, but "shall be the sum total of the rent paid and reserved" for that period for the three stores last above mentioned. The decree also finds that by the payment by complainant in April, 1928, to Joseph Rosenberg at his office, of the rent due April 1, 1928, the place of payment designated in the lease has been changed, and orders the rents thereafter accruing to be paid at Rosenberg's office in Chicago. The decree finally directs that the preliminary injunction be dissolved and that no liability shall accrue by reason thereof except the rental by this decree found to be due from the said complainant."

No cross-errors have been assigned by the defendants, and complainant does not here contest that part of the decree which requires complainant to pay as rent for her three stores the sum of \$465 a month for the year ending April 30, 1923. Complainant contends that the remainder of the decree is erroneous in two respects; first, in finding that the place for the payment



The first of these is the fact that the  
 Government has been unable to secure  
 the necessary funds to carry out its  
 policy of non-interference. This is  
 due to the fact that the Government  
 has been unable to secure the necessary  
 funds to carry out its policy of non-  
 interference. This is due to the fact  
 that the Government has been unable  
 to secure the necessary funds to carry  
 out its policy of non-interference.

of the rent was changed by the acts of the parties, and, second, in the construction placed upon the terms of the lease as to the amount of rent to be paid by complainant for the period subsequent to April 30, 1923.

As to the first alleged error, it appears from the evidence that McKey & Peague no longer occupy the place mentioned in the lease as their office; that they have not been the collecting agents for the defendants since the leasehold estate was transferred; that the defendant Joseph Rosenberg notified the complainant, as soon as he became her landlord, to pay the rent to him at his office; and that complainant endeavored to comply - and eventually succeeded in complying - with that notification. Because of these facts, we think the decree is not reverberantly erroneous in requiring the rent to be paid at the office of Rosenberg, who appears to be acting for all the lessors.

The second alleged error presents the main question involved on this appeal. Complainant claims that the provision of the lease as to the rent for the last six years of the term means that the amount payable during that part of the term shall be the same that is paid for the adjoining stores at the beginning of such period, viz., on May 1, 1922. Defendants claim that the clause in question means that the amount payable during the last six years shall be the same "as is paid for" the adjoining stores from time to time during such period. The decree, in effect, sustains the claim of the defendants on this point, as above stated.

It will be noted that by the clause in question the fifteen years term of the lease is divided and subdivided into periods for the purpose of fixing the amount of rent to be paid. In the first part of the clause, the term is divided into two periods, the first of nine years, and the second of "the remaining six years." Then the first period of nine years - for which the





total rent to be paid is specified - is subdivided into three rent-periods of three years each, and the amount of rent for each of such periods is made payable in thirty-six equal monthly installments. The last six years of the term are treated as a like rent-period, during which the total rent - the amount of which is not given - is made payable in seventy-two monthly installments beginning on May 1, 1922. If such seventy-two installments were intended to be equal in amount, then it would be necessary to determine the total amount of rent payable during the whole six years in order to determine the amount of each equal installment, and this could only be done at the time the first of such installments became due and payable, viz., on May 1, 1922. But the lease does not say that such installments shall be equal, and there is nothing in the language used from which it is necessarily implied that they shall be equal. It is true that the installments in each of the preceding rent-periods are made equal in amount for each of such periods. But any inference or implication that might arise from that fact alone is overcome by the phrase which immediately follows the words "72 installments," viz., "in proportion to other inside stores as above." The omission from this phrase of the word "equal" or some word of like import, and the addition of the words "in proportion to other inside stores," cannot be regarded as otherwise than intentional; and if it was not intended that the last seventy-two installments of rent should be equal in amount, but was intended that such installments should be in proportion to the amount "paid for" the adjoining stores, then it follows, we think, that the amount of each such installment must necessarily be determined, at the time such installment becomes due and payable, by the amount that is then being paid for the adjoining stores. This, in effect, is the construction provided for in the decree, and after a careful consideration of the arguments presented, we think the construction adopted by the chancellor is correct.



[illegible]

Upon the theory that the clause of the lease above mentioned is ambiguous, defendants' counsel introduced the oral testimony of the agent who, on behalf of the landlord, negotiated complainant's lease. Subject to the objection of complainant's counsel, this agent was permitted to state his recollection of the conversation that was had between the landlord and the tenant, at the time of the making of the lease regarding the rent to be paid for the last six years of the term. Complainant met this testimony by the testimony of complainant's son, who was present at the time of such conversation. Each of these witnesses gave a different version of that conversation. Complainant's counsel insists that it was error to admit such testimony. The record does not disclose whether the chancellor considered it at all, nor whether it influenced his findings. However, if we are correct in the conclusions above stated, deduced from the language of the instrument itself, the alleged error if any there be in admitting such testimony, is harmless, and need not be considered.

Considerable evidence was heard for the purpose of establishing the reasonable rental value of complainant's stores, by showing what rents are now being paid to the lessors by tenants who occupy other stores in the same block with the complainant. As we understand the evidence in the record, none of such tenants is now paying less than approximately \$300 a month for each of said stores. It is charged by complainant's counsel that the Van Gelder and Kahn leases were changed for the fraudulent purpose of raising the amount of rent to be paid by complainant, and, as we understand the argument, the court is asked to infer from that fact - assuming it to be true - that some of the later leases were made in a similar manner and for a like purpose. We find no proof in the record affecting the bona fides of any other leases than the two mentioned, and therefore we think the chancellor



From the library book the names of the listed library  
 officers in 1910-1911, 1911-1912, 1912-1913, 1913-1914, 1914-1915, 1915-1916, 1916-1917, 1917-1918, 1918-1919, 1919-1920, 1920-1921, 1921-1922, 1922-1923, 1923-1924, 1924-1925, 1925-1926, 1926-1927, 1927-1928, 1928-1929, 1929-1930, 1930-1931, 1931-1932, 1932-1933, 1933-1934, 1934-1935, 1935-1936, 1936-1937, 1937-1938, 1938-1939, 1939-1940, 1940-1941, 1941-1942, 1942-1943, 1943-1944, 1944-1945, 1945-1946, 1946-1947, 1947-1948, 1948-1949, 1949-1950, 1950-1951, 1951-1952, 1952-1953, 1953-1954, 1954-1955, 1955-1956, 1956-1957, 1957-1958, 1958-1959, 1959-1960, 1960-1961, 1961-1962, 1962-1963, 1963-1964, 1964-1965, 1965-1966, 1966-1967, 1967-1968, 1968-1969, 1969-1970, 1970-1971, 1971-1972, 1972-1973, 1973-1974, 1974-1975, 1975-1976, 1976-1977, 1977-1978, 1978-1979, 1979-1980, 1980-1981, 1981-1982, 1982-1983, 1983-1984, 1984-1985, 1985-1986, 1986-1987, 1987-1988, 1988-1989, 1989-1990, 1990-1991, 1991-1992, 1992-1993, 1993-1994, 1994-1995, 1995-1996, 1996-1997, 1997-1998, 1998-1999, 1999-2000, 2000-2001, 2001-2002, 2002-2003, 2003-2004, 2004-2005, 2005-2006, 2006-2007, 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017, 2017-2018, 2018-2019, 2019-2020, 2020-2021, 2021-2022, 2022-2023, 2023-2024, 2024-2025, 2025-2026, 2026-2027, 2027-2028, 2028-2029, 2029-2030, 2030-2031, 2031-2032, 2032-2033, 2033-2034, 2034-2035, 2035-2036, 2036-2037, 2037-2038, 2038-2039, 2039-2040, 2040-2041, 2041-2042, 2042-2043, 2043-2044, 2044-2045, 2045-2046, 2046-2047, 2047-2048, 2048-2049, 2049-2050, 2050-2051, 2051-2052, 2052-2053, 2053-2054, 2054-2055, 2055-2056, 2056-2057, 2057-2058, 2058-2059, 2059-2060, 2060-2061, 2061-2062, 2062-2063, 2063-2064, 2064-2065, 2065-2066, 2066-2067, 2067-2068, 2068-2069, 2069-2070, 2070-2071, 2071-2072, 2072-2073, 2073-2074, 2074-2075, 2075-2076, 2076-2077, 2077-2078, 2078-2079, 2079-2080, 2080-2081, 2081-2082, 2082-2083, 2083-2084, 2084-2085, 2085-2086, 2086-2087, 2087-2088, 2088-2089, 2089-2090, 2090-2091, 2091-2092, 2092-2093, 2093-2094, 2094-2095, 2095-2096, 2096-2097, 2097-2098, 2098-2099, 2099-2100, 2100-2101, 2101-2102, 2102-2103, 2103-2104, 2104-2105, 2105-2106, 2106-2107, 2107-2108, 2108-2109, 2109-2110, 2110-2111, 2111-2112, 2112-2113, 2113-2114, 2114-2115, 2115-2116, 2116-2117, 2117-2118, 2118-2119, 2119-2120, 2120-2121, 2121-2122, 2122-2123, 2123-2124, 2124-2125, 2125-2126, 2126-2127, 2127-2128, 2128-2129, 2129-2130, 2130-2131, 2131-2132, 2132-2133, 2133-2134, 2134-2135, 2135-2136, 2136-2137, 2137-2138, 2138-2139, 2139-2140, 2140-2141, 2141-2142, 2142-2143, 2143-2144, 2144-2145, 2145-2146, 2146-2147, 2147-2148, 2148-2149, 2149-2150, 2150-2151, 2151-2152, 2152-2153, 2153-2154, 2154-2155, 2155-2156, 2156-2157, 2157-2158, 2158-2159, 2159-2160, 2160-2161, 2161-2162, 2162-2163, 2163-2164, 2164-2165, 2165-2166, 2166-2167, 2167-2168, 2168-2169, 2169-2170, 2170-2171, 2171-2172, 2172-2173, 2173-2174, 2174-2175, 2175-2176, 2176-2177, 2177-2178, 2178-2179, 2179-2180, 2180-2181, 2181-2182, 2182-2183, 2183-2184, 2184-2185, 2185-2186, 2186-2187, 2187-2188, 2188-2189, 2189-2190, 2190-2191, 2191-2192, 2192-2193, 2193-2194, 2194-2195, 2195-2196, 2196-2197, 2197-2198, 2198-2199, 2199-2200, 2200-2201, 2201-2202, 2202-2203, 2203-2204, 2204-2205, 2205-2206, 2206-2207, 2207-2208, 2208-2209, 2209-2210, 2210-2211, 2211-2212, 2212-2213, 2213-2214, 2214-2215, 2215-2216, 2216-2217, 2217-2218, 2218-2219, 2219-2220, 2220-2221, 2221-2222, 2222-2223, 2223-2224, 2224-2225, 2225-2226, 2226-2227, 2227-2228, 2228-2229, 2229-2230, 2230-2231, 2231-2232, 2232-2233, 2233-2234, 2234-2235, 2235-2236, 2236-2237, 2237-2238, 2238-2239, 2239-2240, 2240-2241, 2241-2242, 2242-2243, 2243-2244, 2244-2245, 2245-2246, 2246-2247, 2247-2248, 2248-2249, 2249-2250, 2250-2251, 2251-2252, 2252-2253, 2253-2254, 2254-2255, 2255-2256, 2256-2257, 2257-2258, 2258-2259, 2259-2260, 2260-2261, 2261-2262, 2262-2263, 2263-2264, 2264-2265, 2265-2266, 2266-2267, 2267-2268, 2268-2269, 2269-2270, 2270-2271, 2271-2272, 2272-2273, 2273-2274, 2274-2275, 2275-2276, 2276-2277, 2277-2278, 2278-2279, 2279-2280, 2280-22

would not have been justified in inferring that any of the other leases were fictitious or fraudulently made. By the terms of the decrees, defendants were not permitted to profit by the changes made in the Van Gelder and Kahn leases, and this, we think, was all the court could properly do under the evidence. Defendants vigorously deny any fraudulent intent on their part and point out divers circumstances appearing in the evidence tending to show they did not have any such fraudulent intent.

For the reasons stated the decrees of the Superior Court will be affirmed.

**AFFIRMED.**

Larnes and Gridley, JJ., concur.



I was very much surprised to find that the  
 the same were identical in character. By the  
 in all the cases, the same was found to exist  
 in the same way in the two cases and in the  
 right, and all the events would properly be called the same.  
 which is identical with the identical nature of the same  
 which are also identical in the same  
 that in each case the same was found to exist.  
 For the same reason the same is the same  
 it will be identical.

THE SAME.

as was already stated.

PEOPLE OF THE STATE OF ILLINOIS,  
Defendant in Error,

vs.

BILLIE READ,  
Plaintiff in Error.

3891a  
ERROR TO MUNICIPAL COURT  
OF CHICAGO.

234 I.A. 641

MR. PRESIDING JUSTICE FITCH  
DELIVERED THE OPINION OF THE COURT.

The defendant, after a trial before the court without a jury, was convicted of the crime of pandering, and upon this writ of error urges two grounds for reversal. The first is that the record is fatally defective and does not support the judgment. The second is that the guilt of defendant was not proved beyond a reasonable doubt.

It is first insisted that the date upon which the offense was charged to have been committed is an impossible date. In making the transcript which was first filed in this court, the clerk of the Municipal court used a blank form of information such as is used in that court for cases of this character. In the printed form the date was given as "the \_\_\_\_\_ day of \_\_\_\_\_, A. D. 191\_\_," and the clerk evidently inserted the figures "22" in the last blank space without noticing the fact that the last figure "1" in the original information had been "crossed out" by writing over it the figure "2," thus making it appear in the transcript that the date charged in the original information was in the year "19122," instead of "1922." On motion of the state's attorney made in this court, he was given leave to file a correct copy of the information and such a copy was filed. It shows that as originally filed, the figures "23" had been written in the blank space after the figures "191" in such a way that the figure "2" was written over





and across the last figure "1," thereby making the date alleged to be in the year 1923. It therefore appears that the information did not charge "an impossible date," as claimed by defendant's counsel.

The transcript shows, however, that while the offense was thus charged to have been committed on the 13th day of September, 1923, the information containing that date was in fact made and sworn to and filed on the 28nd day of June, 1923. At the opening of the trial this fact was brought to the attention of the court by the state's attorney, who asked leave to amend the information by changing the figures "1923" to "1922." The stenographic report shows that the court granted such leave and that the figures "23" in the body of the information were then crossed out with a pen and the figures "22" placed above them, and that a second affidavit was written upon the face of the information, which was then (June 28, 1923) signed and sworn to by the prosecuting witness. The stenographic report further shows that thereupon defendant was arraigned upon the amended information; that her counsel objected, and told the court that defendant refused to plead; whereupon the court directed that a plea of not guilty be entered, and the trial then proceeded upon the amended information and the plea so entered. That defendant's counsel so understood the matter at that time affirmatively appears from the stenographic report, which shows that at the close of the State's case, defendant's counsel, in moving to discharge the defendant on the evidence for the State, said: "The original complaint here on the pandering charge \* \* \* charges \* \* \* that Billie Head, on the 5th day of September, - as amended, September, 1922."

While claiming, in one place in his argument, that the original information was never amended, in another place defendant's counsel states that "the defendant objected to the court's amending



The following shows, however, that while the al-  
 low was first changed to have been modified on the 11th of  
 September, 1907, the information contained in the same was  
 not made known to and filed on the same day of same, 1907,  
 the opening of the trial when said was brought in the state-  
 ment of the fact by the state's attorney, who said there is  
 not the intention by changing the figure "22" to "23".  
 A newspaper report shows that the report given was later  
 that the figure "22" in the body of the indictment was  
 changed to with a pen and the figure "23" placed above it,  
 that a witness affidavit was written under the name of the in-  
 dicted, which was then (June 25, 1907) signed and sworn to by the  
 prosecuting attorney. The newspaper report further shows that  
 between defendant was arrested from the medical examination  
 at New Orleans, Louisiana, and that the report was prepared by  
 him in prison; whereas the report showed that it was  
 that he entered, and the trial then proceeded upon the murder  
 indictment and the case was entered. That defendant's counsel  
 showed the matter as that the affidavit signed by the  
 newspaper report, which shows that in the name of the state's  
 attorney, defendant's counsel, in having in Chicago the defendant  
 a witness for the state, said: "The original complaint here is  
 a complaint signed by a witness named as John William Smith, in the  
 name of the state, as a witness, defendant, 1907."

the information on its face," and that the Statute of Amendments does not apply to the amendment of informations or indictments. (The quoted sentence indicates that counsel understood that the information was amended, on its face.) For the amendment of informations, no statute is required. They were amendable at common law. At common law an information was considered as a "declaration in the King's suit," and as such, might be amended by leave of court in the same manner as the plaintiff in a civil suit may amend his declaration. (Truitt v. The People, 33 Ill., 518, 520.)

It is further pointed out by defendant's counsel that the transcript of the common law record shows that an order was entered at the beginning of the trial giving leave to the state's attorney "to amend information by changing date 1922 to 1923." It is apparent from what we have already said that the clerk in writing this order has transposed these dates. The original information, which was filed on June 22, 1923, charges that the crime occurred in September, 1923. When the order was entered, on June 23, 1923, the month of September, 1923, had not arrived; hence no amendment "changing date 1922 to 1923" could be made, for no "date 1922" was in the information at that time. The amendment that was in fact made was to change the figures "1923" to "1922," and the stenographic report shows that this was done in the presence and with the permission of the court. Moreover, the objection that the amendment does not follow the leave granted does not appear to have been made in the trial court.

In connection with the arguments of counsel as to the proof of guilt of the defendant, we have examined the stenographic report of the evidence. While it is true that the charge against the defendant is supported only by the testimony of the prosecuting witness, which is denied by the defendant, and while several witnesses he roomed in defendant's rooming house prior to April 1, 1923,



the information in the case, and the District Attorney  
the only in the country at that time.  
for printed documents that would be required for the  
transmission of the case. The District Attorney  
therefore, as stated in the report, took into consideration  
the fact that the information was contained in a "classified  
the King's case," and as such, might be covered by laws of secrecy.  
The same matter as the District Attorney was aware of  
the fact that the information was contained in a "classified  
document." (Exhibit - The King's case, 1941.)  
It is further pointed out by the District Attorney  
a transcript of the same law report which in order was  
not at the beginning of the King's case in the King's case.  
The fact that the information was contained in a "classified  
document" is stated in the report dated June 1941. It is  
stated that what we have already said that the King's case  
in order was transmitted to the District Attorney.  
The fact that the information was contained in a "classified  
document" was stated on June 1941, and the fact that the  
information was contained in a "classified document" was  
stated on June 1941. When the order was entered, on June 1941,  
a transcript of the King's case, 1941, had not yet been  
received. The fact that the information was contained in a  
document dated June 1941, and the fact that the information  
was contained in a "classified document" was stated on June 1941.  
The information in the case. The information in the case  
is stated in the report dated June 1941, and the fact that  
the information was contained in a "classified document" was  
stated on June 1941. However, the District Attorney had not  
also the fact that the information was contained in a "classified  
document." (Exhibit - The King's case, 1941.)

In connection with the evidence of counsel as to the fact of call at the defendant's house, we have considered the testimony of the witness, which is in turn supported by the testimony of the prosecuting attorney, who is called by the defense, and also several witnesses.

testified that they saw nothing like the occurrences related by the prosecuting witness, yet the question whether defendant's guilt was proved beyond a reasonable doubt really turns upon the credibility of the prosecuting witness and of the defendant. The trial was before the court without a jury. The stenographic report shows that the trial judge gave the defendant the benefit of every right to which she was entitled, but that he believed the testimony of the prosecuting witness rather than that of the defendant. As the trial judge had the benefit of personal observation of the conduct and demeanor of the witnesses upon the witness stand, we think we would not be justified, by anything in this record, in holding that his conclusion as to the facts was wrong, or that the guilt of the defendant as charged was not proved beyond a reasonable doubt.

An extended argument is made by defendant's counsel upon the proposition that because the prosecuting witness testified that she was first "procured" by the defendant as an inmate for a house of prostitution when the defendant lived at a place other than that stated in the information, the prosecution must fail, even though it appears that the witness moved with the defendant to the place named in the information, where the same practices were continued. There is no merit whatever in this argument. The statute makes one guilty of the crime of pandering who "shall procure a female inmate for a house of prostitution." The testimony shows defendant kept such a house. It does not violate any rule of construction of the English language to hold that when defendant moved from one place to another, took the inmates with her to the new place, and there continued the same practices, she "procured" the inmates for the new house.

For the reasons stated, the judgment is affirmed.

AFFIRMED.

Barnes and Gridley, JJ., concur.



[illegible]

PEOPLE OF THE STATE OF ILLINOIS,  
Defendant in Error,

vs.

ISADORE TARSHIS,  
Plaintiff in Error.

3892a  
ERROR TO MUNICIPAL COURT

OF CHICAGO.

234 I.A. 641

MR. PRESIDING JUSTICE FITCH

DELIVERED THE OPINION OF THE COURT.

The defendant was convicted in the Municipal court of the embezzlement of \$3.45, and sued out a writ of error, claiming that the trial court was without jurisdiction, for the alleged reason that the information does not sufficiently describe the property embezzled.

The information alleges that defendant "fraudulently converted to his own use, and fraudulently and feloniously took and secreted, with intent so to do, without the consent of the Yellow Cab Company, a corporation, the sum of Three Dollars .45 (\$3.45), the property of the Yellow Cab Company, a corporation, which came into his possession or into his care by virtue of his employment as a servant of the Yellow Cab Company, a corporation." The record shows that upon this charge defendant was arrested, pleaded not guilty, waived a jury trial, was tried by the court, found guilty "in manner and form as charged in the information herein," and sentenced to six months in the House of Correction and to pay a fine of twenty-five dollars.

There is no contention that the information is defective or insufficient in any other respect than in the description of the property alleged to have been fraudulently converted. There is no bill of exceptions. The transcript consists only of the common law record. The sole contention is that the information "fails to charge a crime" because "no sufficient description or





identification or mark of the property is set forth."

Section 32 of the Criminal Code provides that in prosecutions for embezzlement or fraudulent conversion of the money of any incorporated company by any agent or servant of such company, it shall be sufficient to allege generally an embezzlement or fraudulent conversion of funds of such company "to a certain value or amount, without specifying any particulars of such embezzlement," and that it shall be sufficient to maintain such a charge "if it is proved that any \* \* \* money \* \* \* of such \* \* \* incorporated company \* \* \* of whatever value or amount, was fraudulently embezzled (or) converted" by such agent or servant. Section 6 of Division 11 of the Criminal Code provides that "every indictment or accusation of the grand jury shall be deemed sufficiently technical which states the offense \* \* \* so plainly that the nature of the offense may be easily understood by the jury." Section 27 of the Municipal Court Act provides that "every information shall set forth the offense with reasonable certainty, substantially as required in an indictment." Section 9 of Division 11 of the Criminal Code provides that "all exceptions which go merely to the form of an indictment, shall be made before trial, and no motion in arrest of judgment, or writ of error, shall be sustained, for any matter not affecting the real merits of the offense charged."

In The People v. Cohen, 303 Ill. 523, the defendant was convicted upon an information filed in the Municipal court, which charged him with the larceny of "One Dollar (\$1) good and legal money of the United States of America, of the value of one dollar," and the sole question presented was the sufficiency of this description of the property stolen. The court held the information was sufficient to sustain the judgment. The court said that the offense was defined by the Criminal Code and that the in-



identification as made of the property is not valid."

Section 33 of the Criminal Code provides that in

proceedings for an offence in respect of conversion of the

money of any incorporated company by any agent or servant of such

company, it shall be sufficient to allege generally an offence

of fraudulent conversion of funds of such company "in a sum

in value as money, without specifying any particular of such

embodiment," and that it shall be sufficient to allege such a

sum "it is agreed that any sum of money is such a sum."

Section 34 of the Criminal Code provides that in

proceedings for an offence in respect of conversion of the

money of any incorporated company by any agent or servant of such

company, it shall be sufficient to allege generally an offence

of fraudulent conversion of funds of such company "in a sum

in value as money, without specifying any particular of such

embodiment," and that it shall be sufficient to allege such a

sum "it is agreed that any sum of money is such a sum."

Section 35 of the Criminal Code provides that in

proceedings for an offence in respect of conversion of the

money of any incorporated company by any agent or servant of such

company, it shall be sufficient to allege generally an offence

of fraudulent conversion of funds of such company "in a sum

in value as money."

In The Regina v. Laidlaw, 1893, 100, the following

was said: "The evidence in this case is that the defendant

was charged with the offence of 'fraudulent conversion of

the money of the United States of America, of the value of one

hundred dollars, and the only evidence in respect of the offence of

conversion of the property of the United States of America."

The court held that the evidence was sufficient to sustain the charge.

formation must be construed in accordance with the code, mentioning, in terms or in substance, Sections 6 and 9 of Division 11 of the code, and said further: "One Dollar (\$1) good and legal money of the United States of America' is a definite and certain description of a piece of money of a fixed value, and there is not the slightest basis in common sense or in principle for the contention that either the defendant or the judge would have any difficulty in understanding the nature of the offense charged."

Applying the same reasoning to this case, the words "three dollars" are obviously as definite and certain as "one dollar." If it be said that the information does not charge that such three dollars were "lawful money of the United States of America," there is excellent authority for holding that the sign of the American dollar, which immediately follows the words "three dollars" in the parenthesis (\$3.45)," means three dollars and forty-five cents in money of the United States of America. In Earl v. State, 33 Tex. Cr. 570, 28 S. W. 409, the conviction was for a hog theft and the indictment charged the value of the hog to be "\$3." The defendant moved to quash the indictment because the value was not written in "plain and intelligible words," as the Texas statute requires. The Texas criminal code contains a provision similar to Section 6 of Division 11 of our code, and after stating that provision, the court said:

"It is now too well settled, we think, to be questioned, that arabic numerals and all well defined and well understood abbreviations may be used in indictments without rendering them ineffective." (Citing authorities.) "When values are to be expressed in pleadings, adjudicated cases hold that the money of our federal government may be indicated by using the dollar mark, \$, and arabic numerals, for that purpose. Throughout the Union, in all financial transactions expressed in writing, it is and has been the habit, practice and custom of all the people to so express values. \* \* \* If there is one thing fixed beyond doubt in the mind of the American people it is the meaning of figures prefixed by the dollar mark. \* \* \* It is a part and parcel of our language peculiarly and originally an American contribution to the language of the world."



...was to be construed in accordance with the code, ...  
...in terms of its substance, Sections 8 and 9 of Division II of  
the code, and said further: "The Teller (1) does not make  
money of the United States of America; it is a definite and certain  
description of a piece of money of a fixed value, and there is  
not the slightest basis in common sense or in analogy for the  
conclusion that either the defendant or the judge would have any  
difficulty in understanding the nature of the offense charged."  
Applying the same reasoning to this case, the words  
"three dollars" are obviously as definite and certain as "one  
dollar." It is to be said that the information does not charge that  
three three dollars were "lawful money of the United States of  
America," there is excellent authority for holding that the title  
of the American dollar, which immediately follows the words "three  
dollars" in the indictment (\$3.00), means three dollars and  
no other thing in money of the United States of America. In  
Hill v. Smith, 11 Fed. Cl. 228, 230, 231, the conclusion was  
for a long time and the indictment charged the value of the note  
to be "\$3." The defendant moved to quash the indictment because  
the value was not written in plain and intelligible words, as  
the three dollar verdict. The court refused to quash the  
indictment under the Section 8 of Division II of the code, and  
after stating that provision, the court said:

"It is now too well settled, we think, to be questioned  
that simple numbers and all well defined and well understood  
abbreviations may be used in indictments without rendering  
them defective." (Citing authorities.) "When values are so  
expressed in indictments, although some hold that the money  
of our Federal Government may be indicated by using the dollar  
mark, \$, and cents, however, for that purpose, the word 'dollar'  
alone, in all Federal proceedings, is sufficient in itself to  
indicate the value of the money and certain of all the courts in  
the United States have held, and it is so held in this case,  
as express value. "It is to be said that the word 'dollar'  
is the word of the Federal Government and it is the word of  
the United States of America. It is a part of  
the language of the Federal Government and it is the word of  
the United States of America and it is the word of the  
people of the United States of America."

The information charges that defendant embezzled "the sum of three dollars," etc. This is merely an idiom in common and accepted use among writers of the English language. The words "the sum of" might well have been omitted from the description, but their use does not change the meaning of the sentence in any particular. As illustrating the common use of this phrase, we may refer to the opinion in Young v. The People, 193 Ill. 236, where that form of expression is used no less than three times on one page (237) and particularly, in the expression: "He converted the sum of \$500 to his own use." In that case the defendant was charged with larceny as bailee of "one unpaid promissory note, the same then and there being an instrument of writing for \$1000, then and there of the value of \$1000," and the court said this was "the substance, at least, of a good description of the note alleged to have been converted and stolen." The court also held that the defendant had waived any greater particularity of description by going to trial on the merits, and that an objection of that character could not be urged as ground for arresting the judgment, for the reason that by the express terms of the statute, "a motion in arrest of judgment cannot be sustained for any matter not affecting the real merits of the offense charged in the indictment. Crim. Code, Sec.9, Div. 11."

Defendant's counsel relies upon the decisions in The People v. Hunt, 251 Ill. 446, and The People v. Miller, 178 Ill. App. 292. The latter case is based upon, and follows, the former. As we read the Hunt case, the question presented here was not directly involved (see The People v. Cohen, 223 Ill. App. 231), but the judgment was reversed and remanded because of the failure on the part of the State to prove an allegation in the indictment stating that a more particular description of the money stolen "was to the grand jurors unknown." In any event, we think the later decision of the



...must be compared in accordance with the said, ...  
...in force on the ...  
...the ...  
...money of the United States of America, ...  
...of a piece of money of a fixed value, ...  
...not the slightest basis in common sense or in ...  
...that after the ...  
...activity in ...  
...applying the ...  
...three dollars, ...  
...It is to be ...  
...with ...  
...merchandise, ...  
...of the ...  
...dollars, ...  
...Twenty-five cents in money of the United States of America, ...  
...v. ...  
...the ...  
...to be ...  
...the value was not ...  
...the ...  
...provision similar to ...

...It is ...  
...first ...  
...investments ...  
...from ...  
...the ...  
...of the ...  
...in all ...  
...and ...  
...in ...  
...in the ...  
...of the ...  
...of the ...

The information charges that defendant embezzled "the sum of three dollars," etc. This is merely an idiom in common and accepted use among writers of the English language. The words "the sum of" might well have been omitted from the description, but their use does not change the meaning of the sentence in any particular. As illustrating the common use of this phrase, we may refer to the opinion in Young v. The People, 193 Ill. 236, where that form of expression is used no less than three times on one page (237) and particularly, in the expression: "He converted the sum of \$500 to his own use." In that case the defendant was charged with larceny as bailee of "one unpaid promissory note, the same then and there being an instrument of writing for \$1000, then and there of the value of \$1000," and the court said this was "the substance, at least, of a good description of the note alleged to have been converted and stolen." The court also held that the defendant had waived any greater particularity of description by going to trial on the merits, and that an objection of that character could not be urged as ground for arresting the judgment, for the reason that by the express terms of the statute, "a motion in arrest of judgment cannot be sustained for any matter not affecting the real merits of the offense charged in the indictment. Crim. Code, Sec.9, Div. 11."

Defendant's counsel relies upon the decisions in The People v. Hunt, 251 Ill. 446, and The People v. Miller, 178 Ill. App. 232. The latter case is based upon, and follows, the former. As we read the Hunt case, the question presented here was not directly involved (see The People v. Cohen, 223 Ill. App. 231), but the judgment was reversed and remanded because of the failure on the part of the State to prove an allegation in the indictment stating that a more particular description of the money stolen "was to the grand jurors unknown." In any event, we think the later decision of the



The defendant's counsel relies upon the decision in *United States v. Smith*, 111 U.S. 127, 3 S.Ct. 100, 33 L.Ed. 100, as authority for the proposition that the defendant's testimony is not admissible. This is surely an error in law. The court in *Smith* was dealing with a case where the defendant's testimony was not admissible because it was not in conformity with the requirements of the rules of evidence. In the present case, the defendant's testimony is admissible because it is in conformity with the requirements of the rules of evidence. The court in *Smith* was dealing with a case where the defendant's testimony was not admissible because it was not in conformity with the requirements of the rules of evidence. In the present case, the defendant's testimony is admissible because it is in conformity with the requirements of the rules of evidence.

Supreme court in the Cohan case, supra, where the question was squarely raised and decided, must be regarded as controlling in this case.

The judgment of the Municipal court is affirmed.

AFFIRMED.

Barnes and Gridley, JJ., concur.



THE COURT OF THE LORDS OF THE KINGDOM OF GREAT BRITAIN  
IN PARLIAMENT ASSEMBLED, DO HEREBY ENACT, ENACTED, AND ENACTED,  
That the said Act, in that behalf made, shall have effect, as if  
the same had been made in the first year of the said reign.

THE LORDS OF THE KINGDOM OF GREAT BRITAIN  
DO HEREBY ENACT, ENACTED, AND ENACTED,  
That the said Act, in that behalf made, shall have effect, as if  
the same had been made in the first year of the said reign.

THE LORDS OF THE KINGDOM OF GREAT BRITAIN  
DO HEREBY ENACT, ENACTED, AND ENACTED,  
That the said Act, in that behalf made, shall have effect, as if  
the same had been made in the first year of the said reign.

H. W. GORDON,  
Appellant,

vs.

SAM LIBERMAN and  
LOUIS KAUFMAN,  
Appellees.

APPEAL FROM

CIRCUIT COURT,

COOK COUNTY.

234 I.A. 641

MR. PRESIDING JUSTICE FITCH  
DELIVERED THE OPINION OF THE COURT.

On April 4, 1923, complainant filed a bill in equity to compel the specific performance of an alleged oral agreement for a lease for three years of certain premises in Chicago occupied by the plaintiff as a drug store. A demurrer to the bill was sustained and the bill was twice amended. To the second amended bill, the Circuit Court sustained a general and special demurrer upon the ground that the alleged oral agreement was not enforceable because of the Statute of Frauds, and dismissed the bill for want of equity. Complainant appeals.

The second amended bill states, in substance, that the defendant Liberman is the owner of the premises occupied by the complainant, and the defendant Kaufman is Liberman's nephew; that on April 18, 1922, complainant was in possession of the premises under a three-years' lease from Liberman ending April 30, 1923; that complainant then had an opportunity to purchase "a desirable location" across the street, and that he "made arrangements" with the owner thereof to purchase the same "providing the defendant would not give complainant a new three year lease;" that on May 2, 1922, complainant told Liberman that he "intended to make lasting and valuable improvements upon the premises by replacing certain store fixtures in the said premises with new modern specially made fixtures," requiring



THE TIMES

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
DATE 08-11-2010 BY 60322 UCBAW

[illegible]

an expenditure of \$1200, if Liberman would give him a lease for another three years, "otherwise he would not order the said fixtures;" that he also told Liberman of his opportunity to secure another location; that Liberman thereupon said he would give complainant another lease for three years beginning May 1, 1923, provided complainant would pay an increased rental and "make all necessary repairs and improvements including fixtures, as above stated," which proposition complainant accepted; that thereupon, he abandoned his intention of purchasing the property across the street, and "ordered a large stock of merchandise and certain valuable store fixtures," including a specially made soda fountain, at an expense of \$1,000, a new carbonator, at an expense of \$200, a new candy case at \$225, new plumbing for his sink, and electrical work "for connecting soda carbonator," at an expense of \$100; that "as soon as said improvements were finished, said store stocked with fresh goods and your orator's business began to increase," defendant served him with a sixty days' notice, demanding the surrender of the premises at the expiration of his written lease; that he protested to Liberman, who said he had changed his mind and had leased the premises to the defendant, Kaufman, and that if complainant wanted a lease he would have to buy it from Kaufman. The bill further alleges that defendants have threatened to bring suit for possession at the expiration of the written lease, and prays for an injunction and for specific performance of the alleged oral agreement.

Counsel on both sides rely upon the leading case of Harrison v. Herrick, 130 Ill. 631, in which it was held that where a landlord orally promises to give to his tenant in possession a new lease for more than one year following his existing lease, and such tenant, relying upon his landlord's promise, makes "valuable and lasting improvements" on the property, there is such a part performance of the contract as to





take it out of the operation of the Statute of Frauds, and the agreement will be enforced.

In this case, however, the amended bill shows, by the recitals above mentioned, that the "valuable and lasting improvements" which complainant alleges he made on the strength of his landlord's promise to extend his lease, were in no sense permanent improvements to the property. According to the bill, complainant merely put into his drug store such trade fixtures as he would probably need for his own growing business. Such fixtures were intended solely for his own use and convenience while occupying the premises, and were of such character that they could be readily removed at the expiration of his lease without injury to the premises of the landlord. In the case cited, some of the improvements made by the tenant were of a permanent character which could not be removed without injury to the building, such as expensive panel work upon the ceiling, remodeling the front doors and windows, and putting in stained or cathedral glass. No improvements of that character are alleged to have been made by complainant. Upon the facts alleged in the second amended bill, we are of the opinion that there was no error in sustaining the demurrer and dismissing the bill for want of equity.

The order and decrees of the Circuit Court are affirmed.

AFFIRMED.

Barnes and Gridley, JJ., concur.





28665  
3 - 22865  
R. B. PYRON,  
Defendant in Error,

vs.

S. P. ALLEN,  
Plaintiff in Error.

3894a  
ERROR TO

MUNICIPAL COURT

OF CHICAGO.

234 I.A. 642

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

This case is founded on a purported foreign judgment alleged to have been entered against plaintiff in error and one Allen and one Rule in the District Court of Tarrant County, Texas. The only proof of its existence consisted of certified copies of (1) a citation to the defendants to answer the petition of Pyron in the case, which was dated January 28, 1910, and returned as served the same day; (2) of two summonses, one against defendant Allen and one against Rule, each dated December 9, 1910, and reciting the recovery of a judgment against the three defendants May 31, 1911, for \$640 and interest; (3) a judgment order of April 4, 1917, reciting said judgment of May 31, 1911, and ordering it to be revived as against said Allen and Rule, and (4) an execution dated August 21, 1917, issued upon the judgment of revival. Nowhere in the record is there a certificate of the existence of the judgment of May 31, 1911, upon which the action is predicated, it merely appearing in the form of a recital as above stated. The record is manifestly incomplete.

The general rule is that where the copy of the record of a judgment is required it must be of the whole record so that the court may determine the legal effect of the whole, which may be quite different from a part. (Vail v. Iglehart, 69 Ill. 332; Pine v. Central Life Ins. Co., 207 Ill. App. 596.)



Handwritten signature or initials at the top of the page.

2841A.343

... This case is treated as a separate legal judgment ...  
... alleged to have been ...  
... in the ...  
... The only proof of the ...  
... (1) a ...  
... in the ...  
... (2) ...  
... and ...  
... (1) ...  
... of ...  
... (1) ...  
... and (4) ...  
... of ...  
... of the ...  
... in the ...  
... stated. The ...  
... of the ...  
... is ...  
... of the ...

The record is much like that described in the latter case which contained no certified copy of the judgment sued on, and was held not to amount to proof of the existence of a foreign judgment or what the judgment was. The same may be said here.

One of the defenses here was that the judgment set forth in the statement of claim is barred by limitation, that the supposed cause of action did not accrue to the plaintiff within seven years before the commencement of the suit. In Rebb v. Anderson, 43 Ill. App. 575, where the purported judgment on which the action was based was rendered December 7, 1875, and was revived May 19, 1885, it was held that the plea of limitation was a bar to the judgment of 1875, and that the judgment of 1885 had no effect out of the State where it was rendered, citing authorities, including Grover v. Madeliffe, 137 U. S. 287. Because the purported judgment sued on here in 1921 was rendered in 1911, and the record fails to show it, there can be no recovery on this record. The judgment will be reversed.

REVERSED.

Bridley, P. J., and Fitch, J., concur.



The record is made like this: described in the subject  
and which contains no material copy of the judgment made at  
it was held not to amount to proof of the substance of a foreign  
judgment as to the judgment was. The court says the same  
one of the judgments was that the judgment was  
with in the substance of which is given in the subject, that  
an apparent cause of action did not amount to the plaintiff  
that never before the commencement of the suit. In 1890  
the judgment of the court was the purpose of judgment on  
with the action was heard and rendered December 7, 1890, and  
on February 12, 1891, it was held that the case of judgment  
as to the judgment of 1890, and that the judgment of 1890  
on the effect of the case where it was rendered, being  
affirmed, including judgment of 1890, 1891, 1892, 1893, 1894,  
and the judgment rendered and on June 10, 1895, and rendered  
a bill, and the record falls to show it, there can be no recovery  
of this record. The judgment will be reversed.

REVEREND,

REVEREND, J. L. and W. H. L. L. L.

DAVID BRONSTEIN,  
Plaintiff in Error,

vs.

M. PHILIP GINZBURG,  
Defendant in Error.

3893A  
234 I.A. 642  
ERRON TO

CIRCUIT COURT,

COOK COUNTY.

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

The question presented on this record is whether in an action of libel the declaration as amended states a new cause of action. The court overruled a demurrer to the plea of the Statute of Limitations, and the plaintiff elected to stand by the same.

The original declaration alleged that defendant published a libelous article concerning him on the 16th day of February, 1919. Default was taken against defendant, and from a judgment against him he appealed to this court, which on May 16, 1921, (221 Ill. App., 637) reversed and remanded the cause holding that the alleged libelous article did not name the plaintiff and that the declaration did not allege facts showing that the article applied and had reference to the plaintiff, or was understood by its readers to refer to him, and that, therefore, it was not sufficient to sustain the judgment.

On May 2, 1922, after the case was remanded, plaintiff filed his amended declaration, to which defendant filed a plea of general issue and a plea of the Statute of Limitations. It is conceded that the amended declaration properly connects the plaintiff, by way of inducement, with the alleged libelous article. But if it states a new cause of action it is not mentioned that the Statute of Limitations has run against it.



33414.613

EXHIBIT

EXHIBIT

EXHIBIT

EXHIBIT

EXHIBIT

EXHIBIT

The question presented on this record is whether

an act of omission or commission is required to constitute a violation of the statute. The court answered the question in the affirmative. The court stated that the statute required an act of omission or commission, and the plaintiff proved that the defendant committed an act of omission.

It is held by the court.

The original complaint alleged that defendant

violated a provision of the constitution. The court held that the defendant's conduct was not a violation of the constitution. The court stated that the defendant's conduct was not a violation of the constitution because the defendant did not act with the intent to violate the constitution. The court also stated that the defendant's conduct was not a violation of the constitution because the defendant did not act with the knowledge that his conduct would violate the constitution. The court further stated that the defendant's conduct was not a violation of the constitution because the defendant did not act with the purpose of violating the constitution. The court concluded that the defendant's conduct was not a violation of the constitution.

On May 1, 1961, the court was presented with the following

question: whether the defendant's conduct was a violation of the constitution. The court answered the question in the affirmative. The court stated that the defendant's conduct was a violation of the constitution because the defendant acted with the intent to violate the constitution. The court also stated that the defendant's conduct was a violation of the constitution because the defendant acted with the knowledge that his conduct would violate the constitution. The court further stated that the defendant's conduct was a violation of the constitution because the defendant acted with the purpose of violating the constitution. The court concluded that the defendant's conduct was a violation of the constitution.

We think the plea was good and that the demurrer was properly overruled. Our first decision stated in effect that the original declaration stated no cause of action because it pleaded no facts connecting plaintiff with the alleged libelous article. The holding, therefore, was to the effect that the original declaration was so lacking in material allegations that even after default and verdict it would not sustain a judgment. It was not such a case as that to which most of plaintiff in error's authorities relate, where the allegations defectively stated a good cause of action. In such a case the judgment might stand, being cured by verdict. It is not a case of a restated cause of action because no action was stated before. (Bylesfeldt v. Illinois Steel Co., 165 Ill. 185, 189.) Where the original declaration states no cause of action whatever and the amended declaration does the latter must be treated as filed at the time the amendment was made and not as of the time of filing the original declaration, and so cannot escape the bar of the statute by being filed as an amendment. (Davla v. The City of Evansville, 193 Ill. 901, 904.)

Accordingly the judgment is affirmed.

AFFIRMED.

Fitch, P. J., and Gridley, J., concur.



to think the plan was good and that the committee  
was properly constituted. and that decision placed on record  
that the original constitution should be used as written  
and it placed on record no connection with the  
alleged financial articles. The finding, therefore, was in  
the view that the original constitution was as located in  
material allegations that were shown to be true and correct in  
whole and correct in substance. It was not true a word as that  
in other words of plaintiff in respect to the original constitution, which  
the allegations effectively stated a clear case in fact. In  
fact a case the judgment with which, being shown by evidence.  
It is not a case of a constitution as being shown in fact  
and stated below. STANLEY V. STANLEY, 1911, 1912, 1913.  
1911, 1912, 1913. There was original constitution shown in fact of  
which chapter and the amended constitution from the latter part  
of the year 1911 to the time the amendment was made and was  
of the fact of filing the original constitution, and no change  
except the fact of the state of being filed as an amendment.  
STANLEY V. STANLEY, 1911, 1912, 1913.  
Accordingly the judgment is affirmed.

APPROVED.

STANLEY V. STANLEY, 1911, 1912, 1913.

254 - 25912

JAMES E. DOWING, Administrator  
of the estate of WILLIAM HOLLENBECK,  
deceased,

Appellee,

vs.

CHICAGO RAILWAYS COMPANY et al.,  
Appellants.

234 I.A. 642

APPEAL FROM  
CIRCUIT COURT,  
COOK COUNTY.

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

Defendants appealed from a judgment against them for \$10,000 in an action charging negligence whereby plaintiff's intestate, William Hollenbeck, was killed by one of their street cars.

The car was going west on Madison street, and the deceased, as the evidence tends to show, was going north across the same on or near the east crossing of Paulina street. The accident took place in daylight.

The evidence tends to show that the deceased was hit near the southwest corner of the car; that his body in some way got under the car from its south side; that he caught hold of some part of the car near to or connected with the front truck, to which he clung for a short time, that his body passed under the rear trucks and was not dislodged until the car had gone nearly a block.

The main question is whether there was adequate proof of either negligence by defendants or the exercise of care by the deceased.

Plaintiff's claim that there is such proof rests upon the testimony of a single witness to the effect that the car slowed down nearly to a stop as it reached the intersection and then suddenly started up when the deceased was only a few feet away in the act of stepping onto the track, while appellants



22-11-11

WILLIAM  
THOMAS  
JAMES

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM

WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

WILLIAM THOMAS JAMES  
JAMES THOMAS WILLIAM

contend that such claim is not supported by a preponderance of the proof.

Plaintiff produced three observers of the accident, who gave as many different versions of the movement or position of the car immediately before it reached the crossing. One said that the car continued to move without a stop or change of speed as it came to and over the east crosswalk of Paulina street; another, that it came to a stop on its east side; and the third, that the car slowed down and started up suddenly, striking the deceased as aforesaid. It was conceded on the oral argument that if the statement of either of the two former was correct there was little, if any evidence to show either negligence on the part of defendants or care on the part of the deceased. We shall, therefore, review the evidence bearing upon this salient point of the controversy.

Each of plaintiff's three witnesses who saw the accident was at or near the southwest corner of Paulina and Madison streets. One of them, Mervganos, a Greek, who worked in a candy store at that corner, described the accident as follows:

"The street car hit the man, and it knocked him over, and the man he tried to get up, he grabbed the front wheel, and he could not hold any longer, and the car go 15 or 20 feet, and he fell over again on the back wheel in front, and the back wheel run over the man, dragged him down to Wood a block and a half west. \* \* When I first saw this man crossing the street, the street car was 10 or 15 feet from him. After that the man only walked a few feet, about 5 or 6 feet. \* \* The car was not going very fast, but did not make any stop; it did not slow down or slacken up or check its speed any. It came always at the same speed. \* \* As soon as the car hit the man he fell over. \* \* I don't know exactly what part of the car he grabbed. \* \* He was dragged about 10 or 15 feet, and then fell under the back wheels."

The description of Levoff, a tire salesman, was as follows:



It was a long time before we saw any more of the old friends.

Young and Old

JANUARY 1960

On June 10, 1972, the following information was received from the Bureau of the Census:

of the two knowledge sources it provides the mapping, the

to explain the wide geographic area of influence and very high

There is a small table in the corner of the room.

...that it was in a way not just this one time.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

Page Number: 100 of 100

which leaves me somewhat at a loss to realize the purpose of this

\_\_\_\_\_

U. S. Department of State, Bureau of Consular Affairs, Office of Consular Operations, Washington, D. C. 20520

Being female also gave me good leverage and value, especially

1. The following information is for your information only:

There is a significant positive correlation between the number of years of education and the number of years of experience.

...and the ...

[illegible]

Copyright © 2000 by John Wiley & Sons, Inc.

[illegible]

"This man was crossing the street, and the street car hit him. When it hit him he fell down, and he grabbed hold of the side there by the wheels, and he could not hold that no more - it dragged him a little ways. He left that go and grabbed hold of something under the car, but he could not hold no more, and he let go, so it took him right under the wheels in the rear end of the car. \* \* He was just crossing over the cross, - the street car tracks between the - where the car was, - where the car made the stop, was going to make a stop at the corner, and all of a sudden he (the car) gave a quick one again, and kept right on going. \* \* He (the car) just slowed down to a stop, a real slow stop, but the car did not stop at all. All of a sudden he (the car) went right ahead. \* \* The car when I first saw it was just about 5 feet from the corner, and it was almost at a stop. \* \* The man \* \* was no more than about 30 or about 15 feet away from the car. He was about 10 or 15 feet ahead of the car, something like that. \* \* I do not know exactly how many feet it was; I am not a very good judge of feet. The man was not exactly in the car track; he was just going to cross the car track. \* \* When I first saw him he had crossed the first track that he came to, and he was in the space between the two tracks. The car was about 5 feet from him at that time. Then he walked on across, and the car started up and hit him. \* \* The front end trucks did not pass over him. He was outside of the trucks. \* \* holding there to them wheels. \* \* After he let go of the wheels, \* \* he rolled under the car, so he grabbed hold of another piece, \* \* and he left go and fell, and he got under the rear end of the car. \* \* When the car was about 5 feet away from him he was just going to cross over the track. \* \* He was possible 3 or 4 feet south of it. When he took that other step he got hit by the car."

Plaintiff's witness, Francois, a steak and bond salesman standing at the same corner said he did not see the man before he was hit. He said the car started up, after having made the stop. He testified:

"At the time when I saw the man hit, the car was a few feet from where it had started. \* \* The southwest corner of the car hit him. \* \* It seemed as though it stunned him, and he grabbed hold of the car, I don't know just where; it pulled him toward the car, and he released, and grabbed again; he either grabbed or got picked up by the rear truck. \* \* When he was struck the first time I did not see him go under the car. His legs and body dragged part of alongside of the car. He was on the south side of the car and was holding on to some part of the car. \* \* He was not under any part of the car at the time; he was completely outside of the car, holding on and dragging. \* \* When this man was struck, the car \* \* had gone just about 4 or 5 feet, and it was going very slowly when it struck him. \* \* It is my judgment that it was just moving. It picked up speed as



1. The first of these is the fact that the British Empire is a vast and complex system of territories and peoples, which has been built up over centuries. It is not a simple matter of a few islands and colonies, but a vast and intricate web of relationships and interests. The British Empire is a system of territories and peoples, which has been built up over centuries. It is not a simple matter of a few islands and colonies, but a vast and intricate web of relationships and interests. The British Empire is a system of territories and peoples, which has been built up over centuries. It is not a simple matter of a few islands and colonies, but a vast and intricate web of relationships and interests.

SECRET

100. The first of the two questions is whether the average

[illegible]

it went along across the street. \* \* It crossed at the rate of about 5 or 6 miles an hour, about the customary way that cars cross a crossing."

The car ran about two blocks (not counting two streets that do not intersect Madison street) before the motorman or conductor knew of the accident. A man in an automobile going east on Madison street saw, just before he reached Paulina street, the deceased "struggling to get on his feet, about the center of the car," and that he tried to get hold of something and "snatched hold of the rear trucks of the car," that he dragged for a few feet and "it seemed like he lost his hold and went under, head first." He then turned his automobile around and chased the car to Lincoln street, the second block west, where he told the motorman of the accident. He said that when he first saw the man the front part of the car was crossing the northbound track on Paulina street, and the man at that time was about the center of the car alongside of it struggling to get on his feet. He did not know whether the car stopped at the intersection or not. It was not going very fast but as cars ordinarily go over a street intersection. When he last saw deceased he was reaching for the truck, "his head was underneath the car and his body and limbs out towards the eastbound track."

None of the other witnesses for plaintiff witnessed the accident or the movement of the car prior thereto.

Defendants produced three of the passengers in the car who observed the accident. One, a dishwasher at a hotel, was sitting in one of the small cross seats on the south side of the car next to the window. He said that when he first saw the man he was walking in the middle of the street north, and stepped in the middle of the east track. He said:

"He came from the south. \* \* He was standing up straight between the track that my car was running on and the other track, \* \* looking at the car coming \* \* for only about a second, until the car comes, then



It was about 11:30 p.m. when the witness saw the car and the man. The car was a dark color and the man was wearing a dark suit.

The car was about 100 feet from the witness (not counting the distance of the witness) before the witness saw it. The car was moving in the direction of the witness. The witness saw the car and the man at the same time. The car was a dark color and the man was wearing a dark suit. The car was about 100 feet from the witness (not counting the distance of the witness) before the witness saw it. The car was moving in the direction of the witness. The witness saw the car and the man at the same time. The car was a dark color and the man was wearing a dark suit.

The witness saw the car and the man at the same time. The car was a dark color and the man was wearing a dark suit. The car was about 100 feet from the witness (not counting the distance of the witness) before the witness saw it. The car was moving in the direction of the witness. The witness saw the car and the man at the same time. The car was a dark color and the man was wearing a dark suit.

he got hit. \* \* He threw his hands out and dived, just like a dive. \* \* He was right under where I was sitting. \* \* I did not see anything of him after the instant I saw him dive \* \* . Where I saw this man come across the street, it was the middle of a block, not a street crossing."

Another passenger, a retired police officer after a service of 30 years, sat in the second seat of the car on its south side. He said he saw the man on the sidewalk and noticed him because he looked "a little bit wild and was looking quickly both ways;" that he made a quick walk towards the car and when he got opposite the car stooped quickly and he lost sight of him. He remembered distinctly that the car did make a stop at the Paulina crossing.

Another passenger, a machinist, stood on the back platform, faced to the southwest. As he turned around to the south his attention was attracted by a man stepping off the sidewalk, looking in each direction, and then suddenly moving toward the street car, and felt a jolt or vibration; that when he first saw him he was off the sidewalk about 2 or 3 feet; that he came towards the car; disappeared from his sight and he felt a jolt.

Both the motorman and conductor swore positively that the car stopped on the east side of Paulina street at the regular customary stopping place. The motorman said he was looking straight ahead as he crossed Paulina street but did not see the man.

The car was 49 feet and 2 inches long, 8 feet and 9 inches in width. Its overhang 31-3/4 inches beyond the rail on each side. It was equipped with a fender that drops automatically in front of the forward trucks when an object strikes an apron in front of the car that comes within 4 inches of the rail.

It is evident the man was not hit by the front of the car and did not pass under its front wheels but under it between the front and rear trucks, where his body was caught until dislodged as aforesaid. The car did not have round corners. But



[illegible]

© 2004 Blackwell Publishing Ltd, *Journal of Internal Medicine* 255: 103–110

THE UNIVERSITY OF CHICAGO PRESS  
CHICAGO, ILLINOIS  
1963

[illegible]

and should be in the same position as the one in the  
 original drawing. The drawing is in the same  
 position as the one in the original drawing.

The first was by far the most important. It was the fact that the Government had decided to take action against the "Black Legion". This was a very serious matter, as it was the first time that the Government had taken such action since the war.

was nearly rectangular in shape, slightly narrowing towards its ends. The deceased must have been hit somewhere along its side.

If the three passengers on the car are to be believed, - and the testimony of some of plaintiff's witnesses may be so interpreted - he came towards and into contact with the side of a moving car. It is clear that under such circumstances there could be no recovery, and it is only upon the theory of facts as claimed by witness Levoff that there is any possible ground for recovery. If the car came to Pauline street without stopping and without change of speed, as testified to by one of plaintiff's witnesses, it must have been clearly apparent to the deceased. Likewise if it stopped and started up in the customary way. That it did stop is testified to positively by one of plaintiff's witnesses and three of defendants. All say the car when in motion was moving slowly. No one said that it slowed down and started up suddenly except plaintiff's witness Levoff, who is seemingly no more entitled to credit than the others. Each seemingly gave his best impressions of what happened in probably less than a minute. There was no direct attempt to impeach any of them except Levoff. An employe of the law department of the street car company took down minutes of an interview had with Levoff, which was wholly inconsistent with his testimony. At any rate the great preponderance of the evidence is against Levoff's theory of the facts.

Had the deceased been hit by the front of the car his theory would be more plausible. He evidently was not. That the car should start up suddenly when nearly at a stop, and the deceased whether observing it or not continue moving forward and plunge into it, - as we are obliged to infer from the nature of the accident - indicates a lack of ordinary prudence on his part.

And we fail to see in what respect defendants were



1. The first group of people who were interviewed were the police officers who were involved in the investigation of the case. They were interviewed separately and their statements were taken down in writing. The police officers were interviewed in the police station and the interviews were conducted in the presence of a police officer who was not involved in the investigation of the case. The police officers were interviewed for a period of about 30 minutes and their statements were taken down in writing. The police officers were interviewed in the police station and the interviews were conducted in the presence of a police officer who was not involved in the investigation of the case. The police officers were interviewed for a period of about 30 minutes and their statements were taken down in writing.

negligent unless the motorman after starting his car from a stop or near stop could and should have seen deceased in the act of passing in front of it, and that he then had time to stop it before the contact. There is no testimony to show this state of facts. The testimony of the passengers, as well as the nature of the accident, indicate that when he got near the car he was back of where he could ~~XXXX~~ be seen by the motorman.

But the motorman was bound by no greater degree of care than the deceased. Each was bound to exercise reasonable care under all the circumstances. If deceased attempted to step in front of the car and while close to it and it was stopped, and then it suddenly started, he would probably have been hit by the front of the car. But the great preponderance of the evidence is against that theory of the facts. In that state of the facts the passengers in the car would probably not have seen him at all, at least standing and moving towards the car.

It is too patent for discussion that if the deceased endeavored to pass in front of the car as it was starting up from a stop and was hit, not by its front but by its corner or its side, there is little room for the claim of either negligence by defendants or exercise of care by the deceased. Under such circumstances he was in duty bound to look towards the car and not take chances in so crossing in front of it. If, as Levoff said, the witness on whom plaintiff must rely, the car was only about 5 feet from him when it started up, and he was 3 or 4 feet from its track, it certainly was negligent of him to cross its path under such circumstances. He was hard of hearing, but that would not excuse him from looking. If it did start up, being close to it and before he had gotten in front of it, he must have noted the fact of its moving. He also must have been familiar with the fact of common knowledge that cars frequently slow down



the fact that the only person who was present at the time of the shooting was the person who was shot.

It will be found that the same principles are applied to all cases of the kind.

It is the greatest pleasure to me to hear that you are well and happy and that you are still in the land of the living. I am sure that you will continue to be a blessing to all who know you. I am sure that you will continue to be a blessing to all who know you. I am sure that you will continue to be a blessing to all who know you.

at crossings without stopping. It cannot reasonably be said that one undertaking to cross in front of a car while it is slowing down does not take chances by assuming that it will stop, so long as he sees that it is moving. If cars do not always stop, or are not obliged to stop, when slowing down before a crossing, then no one has the right to assume the car will stop or that he can safely cross in front of it before it does.

Where persons have been injured acting upon the expectation that a car would stop because it was signaled or was slowing down, it has been held under varying circumstances that it was negligence to act upon such assumption. (Welch v. E. C. Ry. Co., 308 Ill. App. 161; Nelson v. C. C. Ry. Co., 194 Id., 615; Ramsay, Admr., etc. v. Ch. Ry. Co., No. 25772, filed March 3, 1930; Winchell v. St. Paul City Ry. Co., 86 Minn. 445, 90 N. W. 1050; Daring v. Mil. Elec. Ry. & Light Co., (Wis.) 175 N. W. 343; Thompson v. Met. St. Ry. Co., 89 App. Div. 10, 85 N. Y. S. 181.)

It was said in the Ramsay case that if the deceased expected the car to stop, "ordinary prudence would have required him to wait until he could have crossed in front of it in safety." In the Winchell case the court said that plaintiff had no right to rely upon the motorman bringing his car to a stop. In the Daring case the court said where one was hit crossing in front of a car, that when he reached the zone of danger it was his duty to look and see if the car had started; that if he did not look, or looked and took his chance to cross ahead of it, in either case he was negligent. In the Thompson case the court said that where one had crossed in front of a car, probably assuming that because it had slowed up it would come to a stop, and he could cross the street safely, he had no right to assume, and there should have been an instructed verdict.



It was a very fine day, and the weather was very pleasant. The children were very happy and played for hours. They had a picnic under a big tree and ate their food. They also had a game of tag and a game of hide-and-seek. They were very tired when they went home, but they were very happy.

These various laws have been referred to in the  
report and a copy of each law is being  
sent to the State Department, the State  
Department is now in the process of  
translating the laws into English.  
The laws are as follows: Law No. 1  
of 1911, Law No. 2, Law No. 3,  
Law No. 4, Law No. 5, Law No. 6,  
Law No. 7, Law No. 8, Law No. 9,  
Law No. 10, Law No. 11, Law No. 12,  
Law No. 13, Law No. 14, Law No. 15,  
Law No. 16, Law No. 17, Law No. 18,  
Law No. 19, Law No. 20, Law No. 21,  
Law No. 22, Law No. 23, Law No. 24,  
Law No. 25, Law No. 26, Law No. 27,  
Law No. 28, Law No. 29, Law No. 30,  
Law No. 31, Law No. 32, Law No. 33,  
Law No. 34, Law No. 35, Law No. 36,  
Law No. 37, Law No. 38, Law No. 39,  
Law No. 40, Law No. 41, Law No. 42,  
Law No. 43, Law No. 44, Law No. 45,  
Law No. 46, Law No. 47, Law No. 48,  
Law No. 49, Law No. 50, Law No. 51,  
Law No. 52, Law No. 53, Law No. 54,  
Law No. 55, Law No. 56, Law No. 57,  
Law No. 58, Law No. 59, Law No. 60,  
Law No. 61, Law No. 62, Law No. 63,  
Law No. 64, Law No. 65, Law No. 66,  
Law No. 67, Law No. 68, Law No. 69,  
Law No. 70, Law No. 71, Law No. 72,  
Law No. 73, Law No. 74, Law No. 75,  
Law No. 76, Law No. 77, Law No. 78,  
Law No. 79, Law No. 80, Law No. 81,  
Law No. 82, Law No. 83, Law No. 84,  
Law No. 85, Law No. 86, Law No. 87,  
Law No. 88, Law No. 89, Law No. 90,  
Law No. 91, Law No. 92, Law No. 93,  
Law No. 94, Law No. 95, Law No. 96,  
Law No. 97, Law No. 98, Law No. 99,  
Law No. 100, Law No. 101, Law No. 102,  
Law No. 103, Law No. 104, Law No. 105,  
Law No. 106, Law No. 107, Law No. 108,  
Law No. 109, Law No. 110, Law No. 111,  
Law No. 112, Law No. 113, Law No. 114,  
Law No. 115, Law No. 116, Law No. 117,  
Law No. 118, Law No. 119, Law No. 120,  
Law No. 121, Law No. 122, Law No. 123,  
Law No. 124, Law No. 125, Law No. 126,  
Law No. 127, Law No. 128, Law No. 129,  
Law No. 130, Law No. 131, Law No. 132,  
Law No. 133, Law No. 134, Law No. 135,  
Law No. 136, Law No. 137, Law No. 138,  
Law No. 139, Law No. 140, Law No. 141,  
Law No. 142, Law No. 143, Law No. 144,  
Law No. 145, Law No. 146, Law No. 147,  
Law No. 148, Law No. 149, Law No. 150,  
Law No. 151, Law No. 152, Law No. 153,  
Law No. 154, Law No. 155, Law No. 156,  
Law No. 157, Law No. 158, Law No. 159,  
Law No. 160, Law No. 161, Law No. 162,  
Law No. 163, Law No. 164, Law No. 165,  
Law No. 166, Law No. 167, Law No. 168,  
Law No. 169, Law No. 170, Law No. 171,  
Law No. 172, Law No. 173, Law No. 174,  
Law No. 175, Law No. 176, Law No. 177,  
Law No. 178, Law No. 179, Law No. 180,  
Law No. 181, Law No. 182, Law No. 183,  
Law No. 184, Law No. 185, Law No. 186,  
Law No. 187, Law No. 188, Law No. 189,  
Law No. 190, Law No. 191, Law No. 192,  
Law No. 193, Law No. 194, Law No. 195,  
Law No. 196, Law No. 197, Law No. 198,  
Law No. 199, Law No. 200, Law No. 201,  
Law No. 202, Law No. 203, Law No. 204,  
Law No. 205, Law No. 206, Law No. 207,  
Law No. 208, Law No. 209, Law No. 210,  
Law No. 211, Law No. 212, Law No. 213,  
Law No. 214, Law No. 215, Law No. 216,  
Law No. 217, Law No. 218, Law No. 219,  
Law No. 220, Law No. 221, Law No. 222,  
Law No. 223, Law No. 224, Law No. 225,  
Law No. 226, Law No. 227, Law No. 228,  
Law No. 229, Law No. 230, Law No. 231,  
Law No. 232, Law No. 233, Law No. 234,  
Law No. 235, Law No. 236, Law No. 237,  
Law No. 238, Law No. 239, Law No. 240,  
Law No. 241, Law No. 242, Law No. 243,  
Law No. 244, Law No. 245, Law No. 246,  
Law No. 247, Law No. 248, Law No. 249,  
Law No. 250, Law No. 251, Law No. 252,  
Law No. 253, Law No. 254, Law No. 255,  
Law No. 256, Law No. 257, Law No. 258,  
Law No. 259, Law No. 260, Law No. 261,  
Law No. 262, Law No. 263, Law No. 264,  
Law No. 265, Law No. 266, Law No. 267,  
Law No. 268, Law No. 269, Law No. 270,  
Law No. 271, Law No. 272, Law No. 273,  
Law No. 274, Law No. 275, Law No. 276,  
Law No. 277, Law No. 278, Law No. 279,  
Law No. 280, Law No. 281, Law No. 282,  
Law No. 283, Law No. 284, Law No. 285,  
Law No. 286, Law No. 287, Law No. 288,  
Law No. 289, Law No. 290, Law No. 291,  
Law No. 292, Law No. 293, Law No. 294,  
Law No. 295, Law No. 296, Law No. 297,  
Law No. 298, Law No. 299, Law No. 300,  
Law No. 301, Law No. 302, Law No.

It was told in the London news that if the Government  
requested the war to stop, 'voluntary' soldiers would have  
to be sent to the front. It was said that the Government  
would not do this. In the London news the story was that  
the Government would not do this. In the London news the story  
was that the Government would not do this. In the London news  
the story was that the Government would not do this. In the  
London news the story was that the Government would not do this.

Many other kindred cases might be cited.

Nearly, if not all, the cases cited by appellee bearing on this phase of the case rely upon the right to assume that the negligent party would not violate some express duty, ordinance or law. Such cases have no application to the facts here. No such violation is here charged. In the case of Lofgren v. Ch. Ry. Co., 293 Ill. 475, cited by appellee, it was said that the deceased had a right to assume when the car began slowing down its speed apparently to stop "that it would not again be speeded up and run across the street at an unlawful or unusual rate of speed."

While it is difficult to account for the extraordinary accident we can reach no other conclusion than that the evidence fails to prove negligence on the part of defendants and shows contributory negligence on the part of the deceased.

Accordingly we must reverse the judgment and remand the cause.

REVERSED AND REMANDED.

Fitch, P. J., and Gridley, J., concur.



my other children cannot right be right.

Really it was all, the same right by rights

because on this point of the law only right is right is

because that the religious people would not violate them

without any, certainly to have, they would have to

violation of the basic law. No such violation is here

because. In the case of United States v. Smith, 1942, 131

U.S. 475, 100 S.Ct. 1017, 101 L.Ed. 1017, the Court said that the Government has a

right to remove from the country those who are a threat to the

security of the United States. It is not to be taken up

at the point where it is alleged that the Government is

unlawful.

While it is difficult to measure the entire

weight of the law in this case, the Government's position is

not to be taken up in this case, the Government's position is

not to be taken up in this case, the Government's position is

not to be taken up.

Accordingly, we will reverse the judgment and

grant the writ.

REVEREND AND HONORABLE

Chief Justice, U.S. and Justice, U.S. Justice,

3897a

PEOPLE OF THE STATE OF ILLINOIS,  
Defendant in Error.

vs.

ALBERT DENEMARK,  
Plaintiff in Error.

ERROR TO  
MUNICIPAL COURT  
OF CHICAGO.

234 I.A. 642

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

Plaintiff in error was found guilty on a trial had without a jury upon an information based upon section 1 of the Brokers' Act. (Ch. 17a, sec. 1, Cahill's Stat. 1923.)

The information contains two charges or counts. The first informs the court that said Denmark "did act as a real estate salesman in that said H. Feingold did \* \* \* sell and offer for sale" etc., thus in the charging part naming a person other than the defendant with the commission of the offense. That no conviction could stand upon such a defective statement requires no argument.

The other count charges said Denmark "did advertise and assume to act as a real estate salesman, he, the said Albert Denmark then and there without a certificate of registration issued by the Department of Registration and Education as required by law." Assuming the word "dod" meant "did," and supplying the omission of the word "being" before the words "then and there," and assuming such defects insufficient to require a reversal, yet we find on an examination of the evidence that it does not support said charge.

The act makes it unlawful to advertise or assume to act either as a real estate broker or as a real estate salesman



RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

STATE OF NEW YORK  
JANUARY 18 1883

38111-1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

RECEIVED BY THE STATE OF NEW YORK  
JANUARY 18 1883

without the certificate of registration. The second count charges the commission of the offense of acting as a salesman, who, as defined by section 2 of the statute is a person "who for a compensation or valuable consideration is employed either directly or indirectly by a real estate broker or by one person, co-partnership or corporation regularly engaged in the business on his or its own account, and not as a broker or agent for others, of buying, selling or leasing real estate," etc.

There is no proof whatever that defendant was employed by and acting for a real estate broker, co-partnership or corporation engaged in such business on his or its own account. The proof offered by the People tended to show that defendant was acting as a broker and not as a salesman. While the statute makes it unlawful for either a real estate broker or a real estate salesman to act as such without the certificate required it makes a distinction between them specifically defining each, so that if one is charged with violating the act as a salesman it is requisite that proof be made of such a state of facts as brings him within the statutory definition of a salesman. There was no such proof in this case.

Disregarding, therefore, the defects referred to, which ought not to pass the scrutiny of a careful prosecutor, the judgment of conviction must be reversed and the cause re-  
manded.

REVERSED AND REMANDED.

Ridley, F. J., and Fitch, J., concur.



[illegible]

...the above referred to ...  
...the receipt of a ...  
...the receipt of a ...

• 1980 •

PEOPLE OF THE STATE OF ILLINOIS,  
Defendant in Error,

vs.

JOHN KOZLOWSKI,  
Plaintiff in Error.

3898a  
234 I.A. 643

ERROR TO

MUNICIPAL COURT  
OF CHICAGO.

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

Plaintiff in error urges three points for the reversal of his conviction on an information charging him with intent to cheat and defraud by making an affidavit containing misrepresentations as to the existence of any judgment, chattel mortgage or other obligation against him or his said business on merchandise or fixtures in a store, for the purpose of inducing the purchase of the same from him.

The first and third points are based upon the bill of exceptions which has heretofore been stricken from the record and, therefore, are not open to consideration. The remaining point is to the effect that the misrepresentations were made in an affidavit intended to comply with the Bulk Sales Act (Ch. 21a, Illinois R.S.,) and that prosecution, therefore, should be under said act. Assuming that the affidavit was intended to meet the requirement of the Bulk Sales Act, yet if the transaction was such as to show that he was guilty under section 96 of the Criminal Code relating to false pretenses there would be no error in trying and convicting him under that statute even though he was guilty by the same acts of a violation of the Bulk Sales Act. It is well settled law that by the same act a party may be guilty of several offenses and that he may be punished for each. (People v. Singer, 111 Ill. 113; Hankins v. People, 106 Ill. 628.) Besides, the act under which defendant was convicted expressly provides: "Nor



834 I.A. 643

RECEIVED BY THE SECRETARY OF THE DEPARTMENT OF JUSTICE

EXHIBIT

IN

UNITED STATES OF AMERICA

VS.

IN REPLY TO THE ORDER OF THE COURT

IN THE MATTER OF THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

THE ESTATE OF

shall any person indicted for such offense be acquitted, for the reason that the facts set forth in the indictment, or appearing in evidence, may amount to a larceny or other felony."

As we must assume, in the absence of a bill of exceptions, that the evidence was sufficient to support the information the judgment will be affirmed.

AFFIRMED.

Gradley, F. J., and Fitch, J., concur.



all my papers relating to the case of the  
in which the facts are stated in the indictment, and  
submitted to the jury, and which is a copy of the  
original.

As we have seen, in the opinion of the  
court, that the evidence is sufficient to support the  
indictment, and the jury will be instructed  
accordingly.

Very respectfully,  
J. H. Smith, Jr., Attorney

JACOB HANDELSMAN et al.,  
Plaintiffs in Error.

vs.

MORRIS ROCKELLS and  
BERTHA ROCKELLS,  
Defendants in Error.

3899a  
23 - 11. 643

ERROR TO  
MUNICIPAL COURT  
OF CHICAGO.

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

This was an action of forcible entry and detainer to recover possession of the premises known as 3909 West Roosevelt Road (and also as Twelfth Street), on the ground that defendants had violated the covenants of a lease of the premises executed by plaintiffs to defendants for a term beginning August 1, 1915, until April 29, 1925.

The case was tried before the court without a jury. Plaintiffs introduced three written documents and rested their case. Thereupon the court entered a finding for defendants and, after denying the usual motions, entered judgment upon the finding.

The three documents consisted of (1) the lease; (2) a notice of election to terminate the lease and of a demand for immediate possession of the premises, and (3) a certified copy of articles of incorporation of Rockells, Inc., issued by the secretary of state, which were admitted to have been filed November 27, 1923, in the recorder's office of Cook County.

The covenant claimed to have been violated is that the lessees will not allow the premises to be occupied in whole or in part by any other person and will not sublet the same, nor any part thereof, nor assign the lease without the written consent of the lessors. The lease also provides that if default



4717

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 01-11-2001 BY 60322 UCBAW

$\alpha$	$\beta$	$\gamma$	$\delta$	$\epsilon$	$\zeta$	$\eta$	$\theta$	$\iota$	$\kappa$	$\lambda$	$\mu$	$\nu$	$\xi$	$\omicron$	$\pi$	$\rho$	$\sigma$	$\tau$	$\upsilon$	$\phi$	$\chi$	$\psi$	$\omega$	
0	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24

respected her value and was to protect her as a

Each form is printed on a separate sheet. To minimize any delay

January 2000, (Source: *Wikipedia* on-line) <http://en.wikipedia.org/wiki/January>

and to assist in the administration and maintenance of the same.

... ..

THE UNIVERSITY OF CHICAGO

Wang, C., & Wang, J. (2017). The impact of social media on consumer behavior: A review of research. *Journal of Consumer Research*, 44(1), 1-16.

1961-1962: The first year of the project, with a focus on the development of the curriculum and the establishment of the program.

[illegible]

also being used to provide a more detailed description of the data.

01/25/19 10:00

(2)  $\lim_{n \rightarrow \infty} \frac{1}{n} \sum_{k=1}^n f(x_k) = \int_a^b f(x) dx$  if  $f$  is continuous on  $[a, b]$ .

not known as to how much of the information is being

[illegible][illegible]

Will send you of my love and devotion, what I can.

... ..

THE UNIVERSITY OF CHICAGO

2011-12-15 14:15:15

1901. 1902. 1903. 1904. 1905. 1906. 1907. 1908. 1909. 1910. 1911. 1912. 1913. 1914. 1915. 1916. 1917. 1918. 1919. 1920. 1921. 1922. 1923. 1924. 1925. 1926. 1927. 1928. 1929. 1930. 1931. 1932. 1933. 1934. 1935. 1936. 1937. 1938. 1939. 1940. 1941. 1942. 1943. 1944. 1945. 1946. 1947. 1948. 1949. 1950. 1951. 1952. 1953. 1954. 1955. 1956. 1957. 1958. 1959. 1960. 1961. 1962. 1963. 1964. 1965. 1966. 1967. 1968. 1969. 1970. 1971. 1972. 1973. 1974. 1975. 1976. 1977. 1978. 1979. 1980. 1981. 1982. 1983. 1984. 1985. 1986. 1987. 1988. 1989. 1990. 1991. 1992. 1993. 1994. 1995. 1996. 1997. 1998. 1999. 2000. 2001. 2002. 2003. 2004. 2005. 2006. 2007. 2008. 2009. 2010. 2011. 2012. 2013. 2014. 2015. 2016. 2017. 2018. 2019. 2020. 2021. 2022. 2023. 2024. 2025. 2026. 2027. 2028. 2029. 2030. 2031. 2032. 2033. 2034. 2035. 2036. 2037. 2038. 2039. 2040. 2041. 2042. 2043. 2044. 2045. 2046. 2047. 2048. 2049. 2050. 2051. 2052. 2053. 2054. 2055. 2056. 2057. 2058. 2059. 2060. 2061. 2062. 2063. 2064. 2065. 2066. 2067. 2068. 2069. 2070. 2071. 2072. 2073. 2074. 2075. 2076. 2077. 2078. 2079. 2080. 2081. 2082. 2083. 2084. 2085. 2086. 2087. 2088. 2089. 2090. 2091. 2092. 2093. 2094. 2095. 2096. 2097. 2098. 2099. 2100. 2101. 2102. 2103. 2104. 2105. 2106. 2107. 2108. 2109. 2110. 2111. 2112. 2113. 2114. 2115. 2116. 2117. 2118. 2119. 2120. 2121. 2122. 2123. 2124. 2125. 2126. 2127. 2128. 2129. 2130. 2131. 2132. 2133. 2134. 2135. 2136. 2137. 2138. 2139. 2140. 2141. 2142. 2143. 2144. 2145. 2146. 2147. 2148. 2149. 2150. 2151. 2152. 2153. 2154. 2155. 2156. 2157. 2158. 2159. 2160. 2161. 2162. 2163. 2164. 2165. 2166. 2167. 2168. 2169. 2170. 2171. 2172. 2173. 2174. 2175. 2176. 2177. 2178. 2179. 2180. 2181. 2182. 2183. 2184. 2185. 2186. 2187. 2188. 2189. 2190. 2191. 2192. 2193. 2194. 2195. 2196. 2197. 2198. 2199. 2200. 2201. 2202. 2203. 2204. 2205. 2206. 2207. 2208. 2209. 2210. 2211. 2212. 2213. 2214. 2215. 2216. 2217. 2218. 2219. 2220. 2221. 2222. 2223. 2224. 2225. 2226. 2227. 2228. 2229. 2230. 2231. 2232. 2233. 2234. 2235. 2236. 2237. 2238. 2239. 2240. 2241. 2242. 2243. 2244. 2245. 2246. 2247. 2248. 2249. 2250. 2251. 2252. 2253. 2254. 2255. 2256. 2257. 2258. 2259. 2260. 2261. 2262. 2263. 2264. 2265. 2266. 2267. 2268. 2269. 2270. 2271. 2272. 2273. 2274. 2275. 2276. 2277. 2278. 2279. 2280. 2281. 2282. 2283. 2284. 2285. 2286. 2287. 2288. 2289. 2290. 2291. 2292. 2293. 2294. 2295. 2296. 2297. 2298. 2299. 2300. 2301. 2302. 2303. 2304. 2305. 2306. 2307. 2308. 2309. 2310. 2311. 2312. 2313. 2314. 2315. 2316. 2317. 2318. 2319. 2320. 2321. 2322. 2323. 2324. 2325. 2326. 2327. 2328. 2329. 2330. 2331. 2332. 2333. 2334. 2335. 2336. 2337. 2338. 2339. 2340. 2341. 2342. 2343. 2344. 2345. 2346. 2347. 2348. 2349. 2350. 2351. 2352. 2353. 2354. 2355. 2356. 2357. 2358. 2359. 2360. 2361. 2362. 2363. 2364. 2365. 2366. 2367. 2368. 2369. 2370. 2371. 2372. 2373. 2374. 2375. 2376. 2377. 2378. 2379. 2380. 2381. 2382. 2383. 2384. 2385. 2386. 2387. 2388. 2389. 2390. 2391. 2392. 2393. 2394. 2395. 2396. 2397. 2398. 2399. 2400. 2401. 2402. 2403. 2404. 2405. 2406. 2407. 2408. 2409. 2410. 2411. 2412. 2413. 2414. 2415. 2416. 2417. 2418. 2419. 2420. 2421. 2422. 2423. 2424. 2425. 2426. 2427. 2428. 2429. 2430. 2431. 2432. 2433. 2434. 2435. 2436. 2437. 2438. 2439. 2440. 2441. 2442. 2443. 2444. 2445. 2446. 2447. 2448. 2449. 2450. 2451. 2452. 2453. 2454. 2455. 2456. 2457. 2458. 2459. 2460. 2461. 2462. 2463. 2464. 2465. 2466. 2467. 2468. 2469. 2470. 2471. 2472. 2473. 2474. 2475. 2476. 2477. 2478. 2479. 2480. 2481. 2482. 2483. 2484. 2485. 2486. 2487. 2488. 2489. 2490. 2491. 2492. 2493. 2494. 2495. 2496. 2497. 2498. 2499. 2500. 2501. 2502. 2503. 2504. 2505. 2506. 2507. 2508. 2509. 2510. 2511. 2512. 2513. 2514. 2515. 2516. 2517. 2518. 2519. 2520. 2521. 2522. 2523. 2524. 2525. 2526. 2527. 2528. 2529. 2530. 2531. 2532. 2533. 2534. 2535. 2536. 2537. 2538. 2539. 2540. 2541. 2542. 2543. 2544. 2545. 2546. 2547. 2548. 2549. 2550. 2551. 2552. 2553. 2554. 2555. 2556. 2557. 2558. 2559. 2560. 2561. 2562. 2563. 2564. 2565. 2566. 2567. 2568. 2569. 2570. 2571. 2572. 2573. 2574. 2575. 2576. 2577. 2578. 2579. 2580. 2581. 2582. 25

be made in any of the covenants the lessors may at any time thereafter, at their election, without notice, declare the term ended.

The gist of plaintiffs' case is that the certificate of incorporation is sufficient to constitute proof of a change of possession of the premises and an assignment of the lease. This contention is based wholly upon recitals in said articles of incorporation and upon the provision of section 145 of the corporation act, which provides that the copies thereof duly certified by the secretary of state "shall be taken and received in all courts as prima facie evidence of the facts therein stated."

The statement filed with the secretary of state is in the usual form required by our statute and recites the purpose of defendants and Samuel J. Levine, with the address of each given as at the premises in question, to form a corporation by the name of Rechells' Inc., and states its object, which is the same as that for which defendants leased the premises, that its principal office is at said premises, that said incorporators are the subscribers to its capital stock, paid in goods, etc., located in the store at 1309 Roosevelt Road, the property of said incorporators, "doing business as Morris Rechells, including all and every of the assets of said parties trading as aforesaid, as well as all goods on order, good will to the business, money in the bank," etc., and stating that said incorporators constitute the first board of directors, with addresses at said premises.

The statement was acknowledged November 9, 1923, and filed November 21, 1923. Upon said statement the secretary of state certified on November 21st that the corporation was legally organized. Its articles of incorporation were filed with the recorder of Cook County on November 27, 1923.



...in any of the ... the ... of the ...

The kind of ... is ... in ... the ...  
... is ... to ... of a ...  
... of the ... and ... of the ...  
... is ... when ... in ...  
... and ... the ... of ...  
... which ... the ...  
... by the ... of ...  
... of the ...

The ... with the ... of ...  
... by ... and ...  
... of ... with the ... of ...  
... in ... is ... a ...  
... of ... and ...  
... of ... the ...  
... of ... the ...  
... of ... the ...

... in the ... of ...  
... of ... the ...  
... of the ... of ...  
... of the ... will ...  
... of the ...  
... of the ...

The ... of ...  
... of ...  
... of ...

It is the theory of plaintiffs in error that these recitals in the statement constitute proof that there was an assignment of the lease to the corporation and possession of the premises was taken thereunder. Such a theory rests entirely upon the presumption that the proposed corporation had already assumed and was exercising its functions and powers as such on said premises at the time the statement was filed. This presumption does not necessarily obtain. The corporation did not become such in law until November 27th, when its charter was recorded in the office of the county recorder. Not until then was it authorized to do business. There is nothing in the record to support the presumption that it did undertake to do business before that date or at that place. Nor is there anything in the record to support the presumption that it actually took possession of the premises or that the lease was actually assigned. It was incumbent upon plaintiffs, relying as they did on violation of the covenants of the lease, to make proof of facts tending to establish such violations and, therefore, to prove an assignment of the lease and a change of possession. No such proof was made. For aught that appears to the contrary, the corporation never actually took possession of the premises and never received an assignment of the lease, all of which is not inconsistent with the statement made to support its application for a license. The most that can be said the statement proves is that it was the intention of defendants to conduct their business on the same premises as a corporation instead of a co-partnership. But the fact that they have done so is not proven. It by no means follows as a logical inference from said mere intention that it was carried out.

There being no affirmative proof of a violation of any covenant of the lease the proof received is insufficient to



[illegible]

make a prima facie case either of an assignment of the lease or possession of the premises by defendant and, therefore, the judgment will be affirmed.

AFFIRMED.

Fitch, P. J., and Gridley, J., concur.



and a high level of accuracy of the data  
 provided by the Government of the Republic of  
 the Philippines.

REMARKS:

1. The data are reliable and accurate.

LYMAN SAILOR,  
Plaintiff in Error,

vs.

HOTEL LA SALLE COMPANY,  
Defendant in Error.

234 I.A. 643

ERROR TO

MUNICIPAL COURT

OF CHICAGO.

MR. JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

Plaintiff commenced a tort action in the Municipal Court of Chicago for damage to his automobile, occasioned by a collision between it and defendant's taxi-cab at the intersection of Taylor and Thomas Streets in Oak Park, Chicago, in the day time on February 26, 1921. On a trial without a jury the court, at the conclusion of plaintiff's evidence, found defendant not guilty. Judgment was entered against plaintiff for costs, and he has sued out the present writ of error.

In his statement of claim plaintiff alleged in substance that he was driving his automobile south on Taylor Street at its intersection with Thomas Street (an east and west street) "with due care and caution and with due regard for his safety and the safety of others;" and that defendant negligently, "at a high and dangerous rate of speed," drove its automobile against and upon plaintiff's automobile, thereby greatly damaging it. Defendant, in its affidavit of merits, denied that at the time and place plaintiff was driving his automobile with due care and caution for his own safety or with due regard for the safety of others, and alleged that the accident was caused by its negligent operation. The evidence disclosed that plaintiff had expended \$434.75 for repairs on his automobile.

According to plaintiff's own testimony it appears in substance that, with his wife sitting on his right, he was





driving his Ford sedan car south in Taylor Street on the west side thereof; that as he approached Thomas Street, which intersects Taylor Street at right angles, he was moving at a speed of from eighteen to twenty miles an hour in a residence district of the city; that he was an experienced driver and could stop his car, going at that speed, within twenty feet; that he was "in the habit of driving" 18 or 20 miles an hour at street intersections; that Thomas Street was of the ordinary width (66 feet between building lines); that as he was about to enter the intersection he "did not see" any car coming from the west on Thomas Street (he did not testify that he then looked to the west); that he entered the intersection at the same rate of speed, and, when he was about ten feet north of the center line of Thomas street, he first saw defendant's taxi-cab, about forty or sixty feet away, coming from the west on the south side of Thomas Street and moving at a speed, as he judged, of from thirty to thirty-five miles per hour; that he then saw that he could not stop his car "without being right in the path of the taxi," so he swerved it slightly to the east and "put on a little gas to get away from him;" that "almost immediately" the taxi-cab, then being south of the center line of Thomas Street, hit his car on the right hand side "at about the rear wheel and the side door" and pushed it ahead about twenty feet; and that "it skidded to the curb and then turned over." There was evidence tending to show that at and immediately prior to the collision the only vehicles in, near or approaching the intersection, were the two automobiles, and a delivery truck standing on Taylor Street, south of Thomas Street, and facing north.

In section 22 of the Motor Vehicle Law of 1919, in force when the accident happened (Cahill's Stat. 1921, Chap. 95a), it is provided that "no person shall drive a vehicle of





the first division as described in section 2 of this Act" (those motor vehicles which are designed and used for the carrying of not more than seven persons) "upon any public highway in this State at a speed greater than is reasonable and proper having regard to the traffic and the use of the way or so as to endanger the life or limb or injure the property of any person. If the rate of speed of any motor vehicle or motor bicycle of said first division, operated upon any public highway in this State, \* \* where the same passes through the residence portions of any incorporated city, town or village, exceeds fifteen (15) miles an hour, \* \* such rates of speed shall be prima facie evidence that the person operating such motor vehicle or motor bicycle is running at a rate of speed greater than is reasonable and proper having regard to the traffic and the use of the way or so as to endanger the life or limb or injure the property of any person. \* \* ." In section 33 of said Law it is provided that "all vehicles traveling upon public highways shall give the right of way to other vehicles approaching along intersecting highways from the right, and shall have the right of way over those approaching from the left: \* \* ." It further appears from plaintiff's testimony that he was familiar with these laws, that he knew that the district in which he was driving at the time of the accident was in a residence portion of the city of Chicago, and that he knew "that a car going east has the right of way over the car going south."

In the case of Johnson v. Pendergast, 308 Ill. 356, our Supreme Court, referring to said section 32 of the Motor Vehicle Law, said (p. 263):

"Section 32 is merely a somewhat involved statement of what rate of speed shall be prima facie evidence of a disregard of duty and consequent negligence and liability. It first states the duty of every person in the use of a highway by a motor vehicle or motorcycle, which would be and is the law without any statute. It then declares that a rate of speed exceeding ten miles an hour in a business section shall be prima facie evidence of negligence, the whole effect of the section being to fix certain rates of speed in different





localities which shall be prima facie evidence of negligence."

And the Court further said (p. 261):

"Where two facts are so related to each other that in reason and human experience the existence of one may fairly be inferred from the other, the law may declare that the proof of one shall be prima facie evidence of the existence of the other. Such a rule is one which the policy of the law and the ends of justice require, and in every case it is sufficient to authorize the finding of fact presumed to exist unless contradicted or explained. It may be either a rule of law or a rule created by statute, \* \* \*. That a certain fact is made by law or statute prima facie evidence of the existence of another does not change the burden of proof but merely determines the verdict or finding if no other evidence is introduced. \* \* It means only that a determination of a fact shall be sufficient to justify a finding of a related fact in the absence of any evidence to the contrary. The only effect is to create the necessity of evidence to meet the prima facie case created, and which, if no proof to the contrary is offered, will prevail. \* \* As soon as opposing evidence is received the case is to be determined upon all the evidence, - the prima facie evidence and all other evidence, - and the question is whether the weight preponderates in favor of the party having the burden of proof. The streets and highways are for the use of the public generally, and each person using the same has rights and assumes duties and obligations to others, and the plaintiff assumed the burden of proving that he was in the exercise of the care required by the law and that defendant was negligent in failing to observe such care."

In the present case plaintiff's evidence disclosed that when the two automobiles approached the intersection, and when they collided, they were both being driven in a residence district of the City of Chicago at a speed in excess of fifteen miles an hour, and that both parties were, under said section 22 of the statute, prima facie guilty of negligence. Plaintiff, in his statement of claim, did not charge defendant with being guilty of wilful or wanton negligence. It is well settled that before a plaintiff can recover damages for injuries caused by a defendant's negligence he must aver and prove that he was himself in the exercise of due care at the time; (Calumet Iron & Steel Co. v. Martin, 115 Ill. 358, 368; Jorgenson v. Johnson Chair Co.,





169 Ill. 429, 430); and that he cannot recover if any negligent act of his proximately contributed to his injuries. (Graham v. Haggmann, 270 Ill. 252, 259; Lerette v. Director General, 306 Ill. 348, 352.) But plaintiff's counsel, after citing the case of Johnson v. Pendergast, supra, contend that the trial court erred in its finding and judgment because plaintiff's prima facie negligence under the statute was overcome by other evidence introduced by plaintiff showing that the street was "clear of other traffic," and that defendant's taxi-cab was traveling at an unusual and very excessive speed. Under all the facts and circumstances in evidence we do not think there is any merit in the contention. Notwithstanding the fact that defendant's taxi-cab was travelling at a higher rate of speed than plaintiff's automobile, we think it sufficiently appears that the speed of the latter, in excess of fifteen miles per hour, proximately contributed to the collision and the resulting injuries. Furthermore, it sufficiently appears that plaintiff was guilty of contributory negligence in that, as he was about to enter the intersection, he failed to look to the west at the proper time to see if any vehicle was approaching the intersection from his right. Had he done so, he would have had ample opportunity to stop or check the speed of his automobile, so as to give defendant's taxi-cab the right of way (Lenartz v. Funk, 224 Ill. App. 180, 186; Zapf v. Kuttan, 229 Ill. App. 406, 408) and to allow it to pass in front of him.

Our conclusion is that the trial court was fully warranted in entering the finding and judgment in favor of defendant, and the judgment is affirmed.

AFFIRMED.

Fitch, P. J., and Barnes, J., concur.





JOHN M. COX,  
Appellee,

vs.

EDWY L. REEVES,  
Appellant.

2341 A. 643

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

MR. JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

This is an appeal from a judgment against defendant for \$3500, entered after verdict on April 28, 1923, in an action for damages for personal injuries suffered by plaintiff as the result of an automobile accident which occurred early in the evening of May 6, 1921, while it was still light, at the intersection of Marquette Road (an east and west boulevard) and Dorchester Avenue (a north and south street) in the city of Chicago.

Plaintiff, about 26 years of age, was a passenger in a single-seated Ford automobile, owned and being driven at the time by one Gibbons. There were two other passengers in the car - Keefrey and Monahan. All had been playing golf at Marquette Park, a considerable distance west of Dorchester Avenue, and were returning to the Jackson Park golf center. Keefrey was sitting in the seat to the right of Gibbons; Monahan was standing on the left running board; and plaintiff was seated partly on Keefrey's lap and partly on the arm of the seat, with his right foot resting on the running board, his left leg inside the car and his left arm around Keefrey's neck. Dorchester Avenue, where it runs into Marquette Road from the south, is about 30 feet wide from curb to curb. On the north side of Marquette Road, and opposite Dorchester Avenue, is what appears to be an alley, called Dante Avenue. About 30 feet west of the





west curb line, extended, of Dorchester avenue is a viaduct of the Illinois Central Railroad Company over Marquette Road, extending about 175 feet from east to west, and immediately east of the viaduct Dorchester avenue continues north from Marquette Road. East of the viaduct Marquette Road is 35 feet wide from curb to curb; and the portion of the south sidewalk extending east from the viaduct to the west curb of Dorchester avenue is about 34 feet in length. As the Ford car, moving east on Marquette Road and a little south of its center at a speed of about 15 miles an hour, approached the viaduct from the west, and was about to go under the viaduct, the driver slackened its speed to about 12 miles per hour and sounded his horn. As the car came out from under the viaduct, plaintiff immediately looked south and down Dorchester avenue and at first saw no vehicle coming north thereon. When the Ford car was about 10 feet west of the west curb line of Dorchester avenue, he looked again and saw defendant's car on Dorchester avenue a considerable distance south of Marquette Road, approaching the boulevard and "coming fast." He immediately called to Gibbons, the driver, that a car was coming. Thereupon Gibbons looked, saw defendant's car, and immediately swerved the Ford car to the north in the endeavor to get away from defendant's car and allow it to pass to the south. The testimony of plaintiff's witnesses was to the effect that defendant's car, in approaching Marquette Road, was going from 20 to 35 miles per hour, and defendant neither slackened its speed nor brought it to a stop before entering the boulevard. It was a five passenger touring car, driven by defendant, and his wife was seated beside him. Defendant testified in substance that he brought the car to a stop just south of the boulevard, then started again, and, on looking to the west, saw the Ford car coming from under the viaduct "very rapidly;" that, being about to turn to the west, he "stepped on the gas" and increased his speed so as to give the Ford car "room to go behind me;" that the Ford car





quickly swerved to the north; that he (defendant) put on his brakes and the Ford car "scraped by me;" that "the rear end of that car on the right side of it hit the right-hand part of my bumper;" that there was a crash and the Ford car ran over the north curb of the boulevard, east of the alley (Dante avenue) and stopped; and that immediately after the collision plaintiff either fell or jumped from the car into the street, a short distance east of the center of the intersection of the streets where the cars came together. Defendant's car continued on towards the west for about 40 feet and stopped under the viaduct. Gibbons testified: "When he struck me he was going northwest. \* \* It turned my machine up, and we ran on two wheels for about 10 feet, and we hit an electric light post and that stopped my car. \* \* The car went up on two wheels and when it came down Cox went off to the right and Monahan jumped off to the left. \* \* After being struck we went about 10 feet before Cox was thrown out. \* \* Cox landed in the middle of the road." He further testified that immediately following the accident he talked with defendant, and that the latter said "I stepped on the gas instead of the brake." Defendant denied making such statement, but admitted a conversation with Gibbons at the time in which, in response to Gibbons' question as to why he had not stopped before entering the boulevard, he said he had stopped. Plaintiff testified: "At the instant of the collision the Ford was going about 10 or 12 miles an hour. The other car was going 35 miles an hour. \* \* Just before it struck, I raised my feet up in the air, and right after that the Ford was raised up on two wheels. \*\*\* Then the Ford was up on one side, I was sort of knocked from under. \* \* I don't know how far it went after I went off. \* \* I hit the ground about ten feet from the middle of the two streets. \* \* I managed to get my feet down so that they hit the street first. \* \* When I struck the street I sort of slid along. \* \* I did not make any





attempt to jump off when I saw defendant's car and shouted to Gibbons. \* \* According to the way the thing happened, if I had jumped, I would have jumped right in front of that machine and would have been run over."

As a result of the accident plaintiff's right knee was fractured. He was conveyed to a hospital, where an x-ray picture of the knee was taken and proper treatment administered. Afterwards he was conveyed to his home where he was confined to his bed for several weeks with a cast on his leg and he suffered much pain. He was compelled to use crutches and was unable to return to his work as a drug clerk for about six months. His knee has become enlarged, the muscles above the knee are wasted, the right thigh is smaller than the left and the conditions are permanent. It is not argued that the verdict is excessive.

Much of the printed brief of counsel for defendant is taken up in argument and discussion of authorities as regards the claimed contributory negligence of Gibbons, the driver of the Ford car. Even assuming that Gibbons was guilty of negligence which contributed to plaintiff's injuries (though we are unable to say under all the evidence that he was) such negligence would not be imputable to plaintiff. (Ewanlund v. Rockford Ry. Co., 305 Ill. 339, 346; Grifenhagen v. Chicago Ry. Co., 399 Ill. 590, 595; Pienta v. Chicago City Ry. Co., 284 Ill. 246, 259.) In the Ewanlund case it is said: "The negligence of the driver in sole charge of a vehicle cannot necessarily be imputed to a passenger in a vehicle. A passenger in a vehicle, if he is caring for his own interests and safety should, when he learns of a threatened accident and has an opportunity to avoid it, warn the driver of the vehicle." In the Grifenhagen case it is said: "The passenger has no right, because someone else is driving the automobile, to omit reasonable and prudent efforts on his part to avoid danger. \* \* On the other hand, if the passenger does exercise ordinary



things on June 21 when I saw defendant's car and stopped to  
look at it. According to me the thing happened, it is not  
possible, I would have jumped right in front of that machine and  
killed him from that way."

As a result of the evidence plaintiff's right hand  
was fractured. He was conveyed to a hospital, where he stayed  
during all the time he was taken and proper treatment administered.  
Plaintiff he was conveyed to the home where he was confined in  
his bed for several weeks with a cast on his leg and he suffered  
great pain. He was compelled to use crutches and was unable to  
stand at the time he was taken to the hospital. His  
right leg became swollen, the muscles atrophy the bone was injured,  
he could hardly be walked than the left and the conditions were  
worse. It is not enough that the verdict is returned.

Each of the parties asked of counsel for defendant  
a return of a verdict and admission of negligence as required  
by the pleadings and negligence of defendant, the driver of the  
car was, was causing that accident and injury to plaintiff  
which resulted in plaintiff's injuries through no fault  
of any way all the evidence that he was negligent was  
in the evidence of plaintiff. Defendant's evidence was  
that plaintiff was negligent. The negligence of the driver is not  
shown by a verdict necessarily be found as a matter  
of course. A verdict in a verdict, it is in favor of the  
defendant and equity should, then be found in a verdict  
defendant and has an opportunity to avoid it, when the driver of  
the vehicle. In the following case it is said: "The government

care for his own safety any negligence of the driver cannot be imputed to the passenger."

And counsel further argue in substance that because plaintiff did not see defendant's approaching car sooner than he did, and did not sooner warn Gibbons, and because plaintiff did not jump from the Ford car immediately after seeing defendant's car and the possible collision, he is himself guilty of negligence and cannot recover. We cannot agree. Plaintiff warned Gibbons of the approach of defendant's car as soon as he saw it, and, under the circumstances, we cannot say he was negligent in not seeing it sooner. He did all that he could to avert the impending collision. He might possibly have escaped injury to himself by jumping from the car, but this is uncertain. He was suddenly and unexpectedly placed in a position of danger. Under such circumstances all that the law required of him was that he should act as ordinary prudence dictated, and his recovery for such injuries as he subsequently received should not be defeated because he might have acted differently, or failed to do what was best. (Wolff Mfg. Co. v. Wilson, 46 Ill. App. 381, 386; Chicago & Alton R. Co. v. Becker, 76 Ill. 25, 31; Stack v. East. St. Louis R. Co., 245 Ill. 308, 310.) Furthermore, he was not bound to anticipate that defendant would be guilty of negligence in not stopping or checking the speed of his car. (Lang v. Chicago Ry. Co., 181 Ill. App. 654, 687; Henry v. Chicago, etc. R. Co., 236 Ill. 219, 223; Kilroy v. Justrite Mfg. Co., 509 Ill. App. 499, 500.) Under all the facts and circumstances we think it was for the jury to say whether or not plaintiff was guilty of contributory negligence. (Renthaler v. Crane Co., 218 Ill. App. 267, 271; Greenberg v. Conrad, 320 Ill. App. 508, 512; Bale v. Chicago Junction Ry. Co., 269 Ill. 476, 482), and we are not disposed to interfere with their verdict in that particular. We cannot say that, as a matter of law, plaintiff failed to exercise ordinary care in riding as a passenger in the



and the fact that the subject matter is

the subject matter.

and the fact that the subject matter is

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

the subject matter.

Ford car in the particular position therein as shown by the evidence.

And we think that the jury were warranted in finding that defendant was guilty of negligence in the operation of his car which proximately caused plaintiff's injuries. Plaintiff's evidence showed that defendant's car, as it approached Marquette Road, was moving at an excessive speed; that, although defendant knew said Road was a boulevard, he failed to stop his car before entering upon it, in violation of an ordinance of the City of Chicago, introduced in evidence, which provides in substance that it shall be unlawful for any person, driving or operating any vehicle propelled by animal or other power upon the public streets or alleys of the city, to drive the same onto any boulevard within the limits of the city "without first bringing such vehicle to a full and complete stop;" and that just after he had entered the boulevard he increased the speed of his car. And it sufficiently appears that defendant, after he had reached the boulevard and saw the approaching Ford car, in so increasing the speed of his car took the chance of being able to pass in front of the Ford car instead of decreasing the speed of his car or endeavoring to stop it. Defendant's counsel argue that, under section 33 of the Motor Vehicle Act (Cahill's Stat. 1923, Chap. 95a) defendant's car had the right of way over the Ford car, which was approaching the intersection from defendant's left. But we do not think this section of the Act is applicable here because, according to the preponderance of the testimony, when the Ford car was just about to enter the intersection, moving at not an excessive rate of speed, defendant's car was a considerable distance south of the intersection and moving at an excessive rate of speed. (Salmon v. Wilson, 227 Ill. App. 66, 286.)

Defendant's counsel contend that the court erred in admitting in evidence the city ordinance, above mentioned, requiring



and are in the positions marked in figure 10.

• *Journal of the American Academy of Child and Adolescent Psychiatry*

and we believe that the following are the most important:

and the following are the results of the analysis:

an 18th-century French scholar, Leibniz's

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

... ..

[illegible]

10. The following information is available for the year ended 31 December 2014:

Source: *Author's calculations* based on data from the *Survey of Consumer Expenditures*, 1990-1999.

It should be mentioned that our research is limited by the fact that we have not been able to identify the specific individuals who have been involved in the various cases of child sexual abuse. This is due to the fact that the information provided by the police and the courts is often incomplete and unreliable. However, we believe that our findings are still valid and that they provide a useful overview of the situation in the Netherlands.

1. *Journal of the American Medical Association*, 1997; 277: 1033-1036.

THE UNIVERSITY OF CHICAGO PRESS

[illegible]

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

[illegible]

1. The first group of people who are interested in the study of the history of the United States are the people who are interested in the history of the United States.

1947-1948

1944-1945

© 1997 by John Wiley & Sons, Inc.

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

100-443887-100

...and ...

10-11-1961, page 10 after unknown no. for de 'gallen, galle

For a detailed description of the system, see the following references:

[illegible]

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

vehicles to stop before being driven onto a boulevard. The ordinance was set forth in full in two counts of plaintiff's declaration and a violation by defendant of its provisions therein alleged. In section 1 of the ordinance, in addition to the provision mentioned, is the further paragraph that it shall be unlawful for any person, driving any motor vehicle upon any public street or alley in the city, to drive "at a speed of more than 10 miles per hour onto or across any other street within the limits of the City of Chicago on which a street car is operating." It thus appears that there are two separate prohibitions contained in the same section of the ordinance, though in different paragraphs. The provision in the first paragraph is applicable to the instant case, but the provision of the second paragraph is not, because no street car was operating on Marquette Road, which was a boulevard and known to be such by defendant. Counsel argue that the ordinance is invalid, for reasons stated in the case of Ellis v. Adams Express Co., 300 Ill. 340, in that it is one regulating speed, and, if considered as a traffic regulation, is unreasonable. In the case mentioned, Ellis recovered a judgment in an action for personal injuries received on July 4, 1916, as the result of a collision of the motorcycle on which he was riding, with a motor truck of the Express Company, at the intersection of Desplaines Street and Jackson Boulevard in the city of Chicago. Two counts of Ellis's declaration charged the negligent operation of the truck in violation of the provisions of an ordinance of the West Chicago Park Commissioners, which provided that "no person shall drive or propel any vehicle across any boulevard in the control of the West Chicago Park Commissioners at any place where such boulevard intersects any street without first causing such vehicle to come to a full stop, and no person shall drive or propel any vehicle across any boulevard within the control of the West Chicago Park Commissioners at any intersection, as aforesaid, at a greater rate





of speed than six miles per hour." On the trial evidence was introduced showing that the truck was not brought to a full stop before crossing the boulevard and that it was driven across it at a greater speed than six miles an hour. The attorney for the express company objected to the admission of the ordinance in evidence and offered instructions to the effect that it was void and directing the jury to find the express company not guilty under said two counts. The trial court admitted the ordinance in evidence and refused said instructions, and because of this action our Supreme Court reversed the judgment and remanded the cause. In the opinion (p. 343) it is said that section 12 of the Motor Vehicle Law (passed in 1915 and in force at the time of the Ellis accident) "prohibited cities and other municipalities from passing any ordinance limiting or restricting the speed of motor vehicles and declared all such ordinances void," and that "the ordinance in question being in direct conflict with the statute just mentioned is void." And the court further said: "Ordinances requiring motor vehicles to stop at street intersections may be for the regulation of speed, \* \* in which case they are void, \* \* or may be for the regulation of traffic, in which case they may or may not be void, depending on the reasonableness of the regulation. The ordinance in question shows on its face that it is clearly an ordinance limiting and regulating the speed at which motor vehicles may cross boulevards within the control of the park commissioners."

In 1919, the legislature of this State passed a new Motor Vehicle Law, in force January 1, 1920. In section 26 of this law (Sahill's Stat. 1923, chap. 95a) it is stated that "nothing in this act contained shall be construed as affecting the power of municipal corporations to make and enforce ordinances, rules and regulations affecting motor trucks, \* \* or from making and enforcing reasonable traffic and other regulations except as to rates of speed not inconsistent with the provisions hereof." In section 33 of said Law





it is provided that "incorporated cities, having a population of more than 10,000 inhabitants, may designate certain streets or boulevards as preferential traffic streets and prescribe rules regulating traffic upon, crossing over, or turning into such streets or boulevards." Evidence was introduced by plaintiff showing that Marquette Road, where it is intersected by Dorchester avenue and between certain named streets had been designated by ordinance as a boulevard. In view of these provisions of the present Motor Vehicle Law, we are of the opinion that the provisions contained in the first paragraph of the city ordinance in question should be construed as a reasonable traffic regulation, and not one which violates said Law. (City of Chicago v. Shaw Livery Co., 258 Ill. 409; City of Chicago v. Keogh, 291 Ill. 183) There is nothing on the face of the ordinance which shows it to be unreasonable. To determine whether it is unreasonable requires proof aliunde. (City of Chicago v. Shaw Livery Co., 258 Ill. 409, 417.) And "the presumption is in favor of the validity of an ordinance, and it is incumbent upon any one, who seeks to have it set aside as unreasonable, to point out or show affirmatively, by clear and definite proof, wherein such unreasonableness exists." (City of Chicago v. Meyer, 290 Ill. 142, 144; City of Chicago v. Green Hill Gardens, 305 Ill. 87, 94.) Defendant did not offer to the court any proof to show that said paragraph of the ordinance was unreasonable as a traffic regulation. And the second paragraph of the ordinance was not in any manner relied upon by plaintiff on the trial, nor was it read to the jury. And even if the provisions of the second paragraph of the ordinance be held to be invalid, such invalidity would not necessarily affect the provisions contained in the first paragraph. (White v. City of Alton, 149 Ill. 626, 634; Village of Franklin Grove v. Chicago N. W. Ry. Co., 196 Ill. App. 167, 170.) Defendant's counsel lay stress on the fact that defendant testified that there was no "Stop!" sign, or other sign, on Dorchester avenue as it entered Marquette Road, indicating that Marquette Road was a boulevard. So that





as it may, defendant's testimony shows that he knew it was a boulevard and that he was required to stop before entering upon it. He claimed that he actually did stop his car just in front of it and because it was a boulevard, although by a preponderance of the evidence it was disclosed that he did not stop. Our conclusion is that the court did not err in admitting the ordinance in evidence. And we think that the court did not err in refusing to give to the jury defendant's offered instruction "that there ~~was~~ no duty imposed by law upon the defendant \* \* to bring his car to a full stop before entering Marquette boulevard on the occasion in question."

Defendant's counsel also contend that, inasmuch as it was shown by the testimony of two of plaintiff's witnesses that an insurance company was interested in the case, the judgment should be reversed. It has several times been decided that where a plaintiff, or his attorney, or one of his witnesses, voluntarily and from improper motives, makes a statement showing or intimating that the party sued is protected by an insurance company from the payment of damages, such statement is good cause for a reversal of a judgment in the plaintiff's favor. (McCarthy v. Spring Valley Coal Co., 232 Ill. 473, 479; Bishop v. Chicago Junction Ry. Co., 209 Ill. 63, 67.) In the present case it appears that the statements complained of were brought out by questions asked by defendant's attorney of the witnesses on cross-examination, and were responsive to the questions. Neither the plaintiff nor his attorney during the trial made any improper statements or intimations that an insurance company was interested in the outcome of the case. Under the circumstances, and considering the size of the verdict and that, apparently, the statements were innocently made, we do not think that the judgment should be reversed because they were made. (Eldorado Coal Co. v. Swan, 227 Ill. 386, 394; Weinlander





v. Volkmann, 153 Ill. App. 137, 139.)

Defendant's counsel also contend that the court erred in refusing to give defendant's offered instruction No. 6. In the instruction it is first stated that in plaintiff's original declaration consisting of three counts it is alleged that defendant's automobile ran upon and against the automobile in which plaintiff was riding, and that plaintiff, while endeavoring to save himself from great bodily injury and probable death, "leaped from said automobile," thereby sustaining injuries. It is next stated that, in the additional counts filed March 8, 1923, it is alleged that, as a direct and proximate result of the negligence of the defendant and of the collision or impact, plaintiff "was hurled and precipitated from the automobile" and fell with great force and violence to the pavement. Then follows: "If you believe from the evidence, under the instructions of the court, that the plaintiff did not leap," etc., "and if you further believe from the evidence that he was not hurled or precipitated from said automobile by reason of the collision in question, but that he voluntarily attempted to alight from said automobile after the same had crossed Dorchester avenue, and thereby sustained injury, then he cannot recover in this case, and your verdict should be not guilty." In view of other given instructions offered by defendant we think that the court was justified in refusing to give this one, particularly as we have been unable to find in the record evidence that plaintiff "voluntarily attempted to alight" from the automobile "after the same had crossed Dorchester avenue." Furthermore, the instruction, directs a verdict and ignores a material phase of the case, viz., that Cox was suddenly confronted with an impending danger, and it assumes that, after all danger to him had passed he voluntarily attempted to alight and while the automobile was still moving. We think that the giving of it would have tended to confuse the jury.





Defendant's counsel also make the points that both court and plaintiff's attorney were guilty of such improper conduct as warrants a reversal of the judgment, and that the court erred in allowing plaintiff to introduce certain testimony in rebuttal. We have carefully reviewed counsels' argument on these points and the appropriate portions of the abstract, but are unable to say that the points have such merit as to warrant a reversal of the judgment.

Finding no reversible error in the record, the judgment of the Superior Court is affirmed.

AFFIRMED.

Fitch, P. J., and Barnes, J., concur.





NIAGARA LITHOGRAPH COMPANY,  
a corporation,

Defendant in Error.

vs.

NATIONAL TRADING COMPANY,  
a corporation, and JOSEPH BANK,  
Plaintiffs in Error.

3462a  
234 I.A. 644

ERROR TO

SUPERIOR COURT,

COOK COUNTY.

MR. JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

It is sought by this writ of error to reverse an order of the Superior Court of Cook County, wherein the court denied defendants' motion, supported by affidavit, to set aside a joint judgment for \$2,702.15, entered against them by default on July 9, 1923.

The action, in assumpsit, was commenced on May 12, 1923. Plaintiff's declaration consisted of five special counts and the common counts. In the first count it is averred in substance that on September 20, 1922, at Chicago, plaintiff, at the request of the defendant, National Trading Company, and pursuant to its guaranty and promise to be accountable for the payment of certain envelopes to be sold and delivered to the North American Import Company, and in reliance thereon, sold and delivered the envelopes to the last named company, at the agreed price of \$2,702.15, on a credit of 30 days "then and there agreed upon between the said Niagara Lithograph Company and the said North American Import Company;" that although said credit and time of payment by said last named company to plaintiff has long since elapsed yet no part of said sum has been paid, of which fact said defendant, National Trading Company had notice on February 5, 1923; and that said National Trading Company, not regarding its said



444.1.A.1.1.3

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

It is noted by this bill of exchange as  
that of the interest of the bill of exchange  
which is the interest of the bill of exchange  
which is the interest of the bill of exchange  
which is the interest of the bill of exchange  
which is the interest of the bill of exchange

The bill of exchange is the bill of exchange  
which is the interest of the bill of exchange  
which is the interest of the bill of exchange  
which is the interest of the bill of exchange  
which is the interest of the bill of exchange  
which is the interest of the bill of exchange

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

WILLIAM B. BROWN  
JAMES B. BROWN  
JAMES B. BROWN

undertaking and promise, has not yet accounted or paid to plaintiff any part of said sum, although often requested so to do. In the second and third counts the making of a written guaranty by the National Trading Company is alleged and the purchase order for the envelopes, to be billed to the North American Import Company, is set forth in haec verba, and on the face thereof appears the following:

"Account Guaranteed by  
National Trading Co.  
Joseph Baer  
Pres."

In the third count also is contained an allegation to the effect that the National Trading Company admitted its liability to plaintiff for the payment of said account. In the fourth count the allegations are substantially the same as in the first count, except that Joseph Baer is individually charged with guaranteeing said account instead of the National Trading Company. In the fifth count said purchase order, with said written guaranty appearing on its face, is set forth in haec verba, and Joseph Baer is individually charged with guaranteeing said account. In none of the special counts is a joint liability charged against the two defendants. In the common counts the "defendants" are charged with becoming indebted, etc. to the plaintiff, on September 20, 1922, in said sum of \$2,703.15. Accompanying the declaration is the affidavit of David R. Clarke alleging that the demand is for "money due to plaintiff from the defendants on a written guarantee of the payment for goods sold to the North American Import Company at the instance and request of the defendants."

The bill of exceptions discloses that on the hearing of defendants' motion to set aside the judgment the affidavit of Frank D. Shobe, one of defendants' attorneys, was presented in support of the motion. On the question of diligence he stated



...the second and third months the making of a written contract  
...the National Trading Company is alleged and the evidence  
...the evidence, to be added to the North American report  
...company, is not forth in page 10 and on the last page

...the following:

...the following:  
...the following:  
...the following:  
...the following:  
...the following:

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

...the first month also is contained in addition to

that when the summons, served on defendants, came into his hands, he searched the files in the clerk's office and ascertained that plaintiff's declaration had not been filed, but that it would become due to the July, 1923, term; that during the week commencing July 2, 1923, he was away on a vacation; that it was his belief that the interests of defendant would be taken care of by some other person in his office "who would note the entry on the office diary that defendants' appearance and plea would be due on July 3rd if a declaration had been filed;" and that upon his return from his vacation he ascertained that a judgment by default had been entered against defendants on July 9th, and that in said diary there was no notation as to the date when defendants' appearance and plea would be due. On the question of defendants' meritorious defense, he stated that "Joseph Baer did not sign the alleged document, on which suit is brought, in his individual capacity, but, if at all, as an officer of the National Trading Company, and that he is therefore not individually liable therefor," and that "the National Trading Company is a corporation and that its acts guaranteeing the negotiable paper of another are ultra vires and void." On the hearing there was also presented, and read without objection, a counter-affidavit of said David B. Clarke, one of plaintiff's attorneys, in which he stated that "the cause of action in this case is based upon the guaranty by the defendant, National Trading Company, made in writing by it, by its president, the defendant Joseph Baer, of a bill for merchandise furnished to the North American Import Company by the plaintiff."

It is well established in this State that motions to set aside a default and for leave to plead are addressed to the sound discretion of the court and will not be reviewed except in case of abuse of such discretion; that a party seeking to have default set aside must show that he acted with due diligence to



[illegible]

protect his rights and that he has a meritorious defense; that a showing of meritorious defense alone is not sufficient; and that the negligence of an attorney employed in the matter will be imputed to the client. (Hitsche v. City of Chicago, 280 Ill. 268, 270, and cases cited.) We think it is apparent from the affidavit of Mr. Shobe that proper diligence, on the part of defendants' attorneys in seeing to it that defendants' appearance and plea were filed in apt time, was not shown. But we are of the opinion that plaintiff's declaration is not sufficient to sustain a judgment entered against the National Trading Company and Joseph Baer, jointly. While some of the special counts would sufficiently sustain a judgment against the National Trading Company alone, none of the counts charges a joint liability of the two defendants upon the alleged guaranty. And we think it clearly appears from some of the special counts that plaintiff's claim is based upon a written guaranty of the National Trading Company alone, whose name is signed to the instrument by its president, Joseph Baer. That this is the basis of plaintiff's claim is further shown by the counter-affidavit, above referred to, of Mr. Clarke. In this connection reference is made to the cases of Miers v. Coates, 57 Ill. App. 216, 220; Thompson v. Hasselman, 131 Ill. App. 257, 260; Derby v. Gustafson, 131 Ill. App. 281, 285; Northeastern Coal Co. v. Tyrrell, 133 Ill. App. 472, 478. And the judgment, being erroneous as to Joseph Baer, must be reversed as to both defendants. (Seymour v. Richardson Fueling Co., 205 Ill. 77, 82; Livak v. Chicago & Erie R. Co., 209 Ill. 218, 226.)

It is earnestly contended by plaintiff's counsel that the judgment rendered against both defendants can be sustained under the common counts, because the contract of guaranty was an original undertaking and because there was nothing left to be



It is respectfully requested that the Court be advised of the results of the hearing on the motion to set aside the judgment in the case of United States v. [Name], and that the Court be advised of the results of the hearing on the motion to set aside the judgment in the case of United States v. [Name].

done under that contract other than the payment of money. So far as the present record discloses, we think that the guaranty should be considered as a collateral undertaking (credit being extended by plaintiff to the North American Import Co. in the first instance and the account being guaranteed by the National Trading Company), in which case the guaranty must be declared upon specially. (Brand v. Whelan, 18 Ill. App. 186, 190; American Exchange Nat. Bank v. Seaverns, 121 Ill. App. 480, 483.) In Lusk v. Threen, 189 Ill. 127, 135, it is said:

"Undoubtedly, where the question involved is whether the promise is original or collateral, the test is whether the credit is given to the person sought to be charged, or to some one else."

For the reasons indicated the judgment of July 9, 1923, against both defendants is reversed, and the cause is remanded for the purpose of allowing the defendants, or each of them, to plead to the declaration or any amended declaration and for a trial upon the merits.

REVERSED AND REMANDED.

Fitch, P. J., and Barnes, J., concur.





PEOPLE OF THE STATE OF ILLINOIS,  
Defendant in Error,

vs.

GEORGE BRISCOE,  
Plaintiff in Error.

ERROR TO

MUNICIPAL COURT

OF CHICAGO.

234 I.A. 644

MR. JUSTICE GRIDLEY DELIVERED THE OPINION OF THE COURT.

An information filed in the Municipal Court of Chicago charged Briscoe with the larceny at Chicago, on September 8, 1923, of "one lot of railroad passes," of the value of \$15, the property of the South Side Elevated Railroad Company. He waived a jury trial and pleaded not guilty. After a hearing the court found him guilty and sentenced him to the House of Correction of Chicago for six months and to pay a fine of one dollar. No printed brief and argument has here been filed by the State's Attorney.

An agent of the railroad company at its Congress street elevated station testified that on the morning of September 8th, he left his seat and when he returned he found that a rack containing 250 passes had been broken into and that the passes were gone. Another agent, named Dice, testified that the missing passes were numbered from 21251 to 21500. Three witnesses, called on behalf of the People, each testified to the purchase from Briscoe for fifty cents of a transferable pass, good for the week from September 10th to September 16th, inclusive. These passes were taken from said witnesses by agents of the railroad company, and two of the passes were introduced in evidence as exhibits, but neither appears to bear any one of the numbers as testified to by Dice. A third pass for said week, bearing the number 1478 and claimed to have been stolen, was also introduced.



www.elsevier.com

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific information required.

1954 JAN 2 1954

119. A. I. 183

1746/1747 18/12/1746

1. The first group of people who are interested in the study of the history of the United States are the people who are interested in the history of the United States.

[illegible]

... of the ... ..

The witness Holmes testified that he purchased this pass from a man named Casey for fifty cents and, when he attempted to ride on it, it was taken up. Briscoe was a witness in his own behalf and he denied ever stealing any passes from the railroad company or ever selling any pass or passes to any of said three witnesses.

We do not think that the finding and judgment can be sustained. It does not sufficiently appear that the passes, which as claimed were transferred by Briscoe to said three witnesses had been stolen. Nor does it sufficiently appear that they were any of the passes claimed to have been stolen. Briscoe was not sufficiently connected with the larceny as charged, which was denied by him.

The judgment of the Municipal Court is reversed and the cause remanded.

REVERSED AND REMANDED.

Fitch, P. J., and Barnes, J., concur.





ADOLPH J. BORGMANN,  
Appellant,  
vs.

PATRICK J. CARR, County Treasurer  
of Cook County, ROBERT M. SWEITZER,  
County Clerk and Ex-officio County  
Comptroller of Cook County, ARTHUR  
J. CENSAK, President of the Board  
of Commissioners of Cook County, and  
the COUNTY OF COOK,  
Appellees.

3904a  
APPEAL FROM SUPERIOR  
COURT OF COOK COUNTY.

234 I.A. 644

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the complainant from a decree of the Superior court which sustained a demurrer pro tenuis to an amended bill of complaint, and dismissed the same for want of equity. The bill makes defendants thereto the County Treasurer, County Clerk, and President of the County Board, respectively, of Cook County.

The complainant avers that he is an actual resident and tax payer in Cook County and presents his bill in behalf of himself and other tax payers who may desire to join in the bill.

The bill of complaint states that, on the 18th day of December, 1922, the Board of County Commissioners of Cook County adopted a resolution which was approved by the president of the County Board and which was as follows:

"Whereas, within that period of the first quarter of the fiscal year of the county which may ensue prior to the passage of an annual appropriation bill, the Board of Commissioners has the right and authority to authorize the county expenditures and to incur county expenses and liabilities not otherwise unlawful without an appropriation therefor having been previously made, provision thereafter to be included in the annual appropriation bill to be thereafter adopted within the said first quarter of the fiscal year to defray all necessary expenses and liabilities for the entire fiscal year commencing on the first Monday of December; and



THE UNIVERSITY OF MICHIGAN  
LIBRARY  
J. GORDON, President of the Board  
Commissioner of New Jersey, 1900  
Newark, New Jersey, 1900  
J. GORDON, President of the Board  
Commissioner of New Jersey, 1900  
Newark, New Jersey, 1900

443 ALIEN

[illegible]

... ..

[illegible]

"Whereas, the annual appropriation bill of the county for the current fiscal year has not been adopted and there is now, and presently, before the adoption of said annual appropriation bill, will be urgent need and necessity for funds 'for necessary expenses, expenditures, and liabilities incident to the investigation and prosecution of charges of criminal violations of the law of the state with reference or related to the affairs, revenues or property of the Board of Education of the City of Chicago;'

"Whereas, it is the intention and is and will be the duty of the Board of Commissioners to include in the annual appropriation bill to be adopted hereafter to defray the necessary expenses, expenditures and liabilities of the county for the current fiscal year an appropriation of at least One Hundred and Sixty-five Thousand Dollars (\$165,000) for all necessary expenses, expenditures and liabilities incurred and to be incurred incident to aforesaid investigation and prosecution;

"Now, therefore, Be It Resolved, that the County comptroller be and hereby is authorized and directed to draw and sign, and that the President of the Board be and he hereby is authorized and directed to countersign, and that the County Treasurer be and he hereby is authorized and directed to pay County Warrants of not exceeding \$75,000 upon and from the General County Fund not appropriated to or for other purposes, for accounts, claims and demands hereafter from time to time to be ordered paid for the necessary expenses, expenditures and liabilities at present incurred or presently, prior to the adoption of said annual appropriation bill to be incurred for the necessary expenses, expenditures and liability incident to the aforesaid investigation and prosecution.

"And Be It Further Resolved, That there be and there hereby is set aside from the General County Fund not appropriated to or for other purposes the sum of \$75,000 hereby designated 'School Board Investigation Fund,' upon and from which aforesaid warrants shall be drawn and paid as aforesaid.

"And Be It Further Resolved, That upon the payment of the aforesaid warrants for accounts, claims and demands hereafter from time to time to be ordered paid as aforesaid, the County of Cook do and will keep and save the said County Comptroller, President and County Treasurer, and each of them, free and harmless from and against any and all claims, demands, costs and damages for which they or either of them shall or may be or become liable by reason of said payments or any of them."

The bill alleges that the defendants in their official capacity are about to exercise and do the various things required of them under this resolution. It further sets up that, at the request of the State's Attorney of Cook County and the Chief Justice of the Criminal Court of Cook County, the Attorney General of the State of Illinois has assumed to investigate and is now investigating various alleged violations of the Criminal Law of the State of Illinois, with reference to the special matter set forth in the resolution, and to that end has employed various persons as investigators, stenographers,





clerks, etc., in and about the investigation of said matters, by a special Grand Jury of Cook County, duly impaneled by order of the Criminal Court of Cook County, and has also employed various attorneys for the purpose of conducting said investigation before the Grand Jury and for the purpose of prosecuting the person or persons who have been or may be indicted in and about the alleged criminal violation; that the Attorney General has submitted to the Comptroller of Cook County certain bills for the payment of services rendered by the persons employed; that his bills have been submitted to the County Board of Cook County and approved and ordered paid; that warrants for the payment of the same have been drawn, duly approved and signed by the Comptroller of Cook County and the President of the County Board and the Treasurer, in their official capacity, and have been duly paid; that the employment of these persons continues, and that it is the intention of the Attorney General to submit further bills, as the expenses incurred by his office for services rendered in these matters, and that it is the intention of the Board of Officials to order the bills paid and issue warrants for the same, and that they will be signed by the defendants in their official capacity. Further, that it is the intention of the Board of Commissioners within the first quarter of the fiscal year expiring on the 28th day of February, 1923, to pass its annual appropriation bill; that complainant is informed and believes and charges the fact to be that it is the intention of the Board of Commissioners to include in said annual appropriation bill an appropriation in the amount of \$163,000 to defray the expenses of the Attorney General incurred by him in the prosecuting of and the carrying out of the purposes set forth in the resolution of the Board of Commissioners.

The bill charges that the Board of Commissioners has no authority at law to make any appropriations for or to pay any of





the expenses incurred or to be incurred by the Attorney General in and about the investigation and prosecution of the matters and things set up in the bill. The bill waives answer under oath and prays that the defendants in their several official capacities may be restrained and enjoined from signing, counter-signing or paying any warrant or warrants as described.

The abstract does not indicate that the bill of complaint is verified. The complainant argues here that the Board of Commissioners of Cook County has no power to appropriate and pay out of County funds \$165,000 to defray the contingent expenses of the Attorney General's office incurred in the investigation and prosecution of crime in Cook County, and cites as authority for this contention Section 18 of Article 4 and Sections 1 and 23 of Article 5 of the Constitution of the State, Whitmore v. People, 227 Ill. 453, Perry v. Rinear, 42 Ill., 160, Seauchamp v. Kankakee Co., 45 Ill., 275, and Greenwood v. DeKalb County, 90 Ill. 600.

Complainant says, relying on the same and other authorities, that what cannot be done directly the law will not permit to be done indirectly, and calls attention to the unquestioned rule of law, that a court of chancery will, at the suit of a tax payer, give relief by injunction against an illegal appropriation of public funds. The careful reading of the order passed by the County Commissioners of Cook County will disclose that it does not authorize an appropriation for the contingent expenses of the Attorney General of Illinois, which, it may be conceded under the authorities cited, would be illegal. On the contrary, the bill discloses that the Attorney General has been requested by the State's Attorney and Chief Justice of the Criminal court to participate in the investigation and prosecution of alleged criminal acts committed within the County of Cook.

The bill does not charge that the Attorney General had received or that he will receive any part of the appropriation.



[illegible]

The fourth clause of Section 4, Chapter 14, Cahill's Illinois Revised Statutes 1923, provides that among other duties of the Attorney General shall be "to consult with and advise the several State Attorneys in matters relating to the duties of their office, and when in his judgment the interest of the people of the State requires it, he shall attend the trial of any party accused of crime and assist in the prosecution."

In Nye v. Foreman, 315 Ill. 298, the complainant filed a bill for the purpose of restraining the county officials from appropriating and paying from the funds of the county salaries of assistants of the State's Attorney of the County. The bill was dismissed by the trial court and the complainant appealed.

The decree of the trial court was affirmed and in the course of its opinion the court said: "The contention of the appellant is, that the County of Cook has no power, either express or implied, to appropriate the public moneys to the payment of the salaries of the assistants<sup>to</sup>/or employees of the State's Attorney. The position of the appellee is, that section 7 of article 10 of the constitution of 1870 expressly provides that the "county affairs" of the County of Cook shall be managed by the board of county commissioners, which board the section provides shall be elected in that county for that purpose; that the County of Cook is an agency of the State for governmental purposes, and as such has many implied powers, among them the power to provide for the local administration of justice, including the enforcement of the criminal laws, and is charged with the duty of bearing, in the main, the expenses of executing the criminal laws of the State within its borders, and must, in general, defray the expenses incurred in discharging its functions of "managing the affairs" of the county; that under the proper construction of said section 7 of article 10 of the constitution of 1870 it is within the power of the board of county commissioners, in the management of the county affairs, to employ and pay attorneys to assist the State's





Attorney in the discharge of duties in which the county is interested, including criminal causes, if additional counsel is necessary to aid in the proper administration of such affairs.

"The General Assembly, it is clear, has long and uniformly understood and acted upon the theory the County of Cook, under a proper construction of said constitutional provision, had full power to pay the assistants to the State's Attorney, and that it was the duty of the said county to make such payments."

Such being the powers of the County Board, we think it is immaterial whether such assistants are named by the State's Attorney acting wholly upon his own views as to the necessity of the situation or upon consultation and conference with the Attorney General of the State with reference to the same. See also Dal Pino v. Board of Commissioners of Cook County, 345 Ill., 496; Fergus v. Russell, 270 Ill. 304.

The allegations of the bill do not disclose a case which calls for the interposition of a court of equity, and the decree dismissing the same is affirmed.

AFFIRMED.

McSurely and Johnston, JJ., concur.



...in the ... of ... the ... is ...  
... .. It ... ..  
... .. of ... ..  
... .. it is ... ..

... .. the ... ..  
... .. it ... ..  
... .. in ... ..  
... .. it is ... ..

... .. the ... ..  
... .. and ... ..  
... .. it is ... ..  
... .. it is ... ..

... .. it is ... ..  
... .. it is ... ..  
... .. it is ... ..  
... .. it is ... ..

... .. it is ... ..  
... .. it is ... ..  
... .. it is ... ..  
... .. it is ... ..

... .. it is ... ..  
... .. it is ... ..  
... .. it is ... ..  
... .. it is ... ..

... .. it is ... ..  
... .. it is ... ..  
... .. it is ... ..  
... .. it is ... ..

3905a

A. C. FLYNN HEATING COMPANY,  
a Corporation,

Appellee,

vs.

THE YELLOW CAB COMPANY,  
a Corporation,

Appellant.

APPEAL FROM MUNICIPAL COURT  
OF CHICAGO.

234 I.A. 644

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THE OPINION OF THE COURT.

The Yellow Cab Company, appellant, was defendant in the trial court in an action brought upon an award. Judgment in the sum of \$4882.82 was entered upon the finding of the court.

The controversy between plaintiff and defendant arises out of a certain contract made, as plaintiff alleges, September 20, 1919, but, as the defendant asserts, on October 15, 1919, whereby plaintiff agreed to install a certain heating and ventilating plant in defendant's building at No. 1117 West Monroe street, Chicago, for which defendant agreed to pay the sum of \$7,400. It appears that upon completion of the work the heating plant was satisfactory to defendant, but it was dissatisfied with and complained of the ventilating plant. Three thousand dollars of the amount named in the contract was paid but payment of the balance was refused for the reason indicated. By an arrangement between the parties their differences were submitted to three arbitrators, one of whom was chosen by each of the parties, these two choosing the third.

A careful examination of the somewhat voluminous pleadings indicates that there are two controlling issues in the case - first, whether the arbitrators departed from the terms of the submission, and second, whether the arbitrators were or any one of them was guilty of such misconduct as to vitiate the award. If either of these two issues are decided in the negative, the judge-



AMERICAN TRADING COMPANY

NEW YORK

2341 A. 644

THE AMERICAN TRADING COMPANY

NEW YORK

NY

THE AMERICAN TRADING COMPANY

NEW YORK

THE AMERICAN TRADING COMPANY

NEW YORK

The American Trading Company, New York

is a corporation organized under the laws of the State of New York

and has its principal office at 100 Broadway, New York

The American Trading Company, New York

is a corporation organized under the laws of the State of New York

and has its principal office at 100 Broadway, New York

The American Trading Company, New York

is a corporation organized under the laws of the State of New York

and has its principal office at 100 Broadway, New York

The American Trading Company, New York

is a corporation organized under the laws of the State of New York

and has its principal office at 100 Broadway, New York

The American Trading Company, New York

is a corporation organized under the laws of the State of New York

and has its principal office at 100 Broadway, New York

The American Trading Company, New York

is a corporation organized under the laws of the State of New York

and has its principal office at 100 Broadway, New York

The American Trading Company, New York

is a corporation organized under the laws of the State of New York

ment must be reversed, and in the view which we take of the case it will be necessary to discuss only one of them - the second. As to the first, it will be sufficient to say that while the question is not free from doubt, we are inclined to the opinion, based upon a consideration of the written statements of the parties, defendant's <sup>oral</sup> statement before the arbitrators and its conduct after the decision of the arbitrators was announced, that it must be held to have been the intention of the parties that all matters of disagreement between them growing out of the making of the contract were submitted to the arbitrators for decision, with the understanding that all differences should be settled by that decision.

Pursuant to that agreement the arbitrators met and heard the evidence (the interested parties being represented by their attorneys) and on the 9th day of October, 1920, an award was made in writing and signed by all the arbitrators. Their decision was in brief that the Flynn Heating Company should make certain additions as outlined by the arbitrators and should examine and adjust the equipment previously installed by them, leaving the plant in working order. The award reads:

"When the aforementioned additions and other conditions as outlined are certified to by this Board, the Yellow Cab Company shall pay to the A. C. Flynn Heating Company the sum of \$4400.00 and the A. C. Flynn Heating Company, after above certification by this Board, shall be discharged from any further obligations in the premises. The A. C. Flynn Heating Company shall immediately proceed with the conditions as above outlined and shall complete the same by November 1, 1920, unless granted an extension of time by this Board."

On December 7, 1920, a statement in writing signed by the arbitrators sets forth that the arbitrators visited the premises in question on that day and made an examination in order to determine if the requirements laid down in their decision of October 9th had been complied with, and after an inspection of the work as ordered certified that "the conditions as required by the decision



and much be recovered, and in the view of the fact that the same  
it will be necessary to discuss with me at length - the report.  
As to the first, it will be sufficient to say that while the  
question is not yet decided, we are inclined to the opinion  
would mean a consideration of the subject in connection with the  
then, following the statement before the committee and the meeting  
After the meeting of the committee was announced, that it was  
to hold to have been the subject of the committee and all matters  
of disagreement between them existing out of the meeting of the com-  
mittee were submitted to the committee for decision, with the  
understanding that all differences should be settled by that the  
committee.  
It was stated that agreement the committee had not  
made the subject (the interested parties being represented by  
their attorneys) and on the 15th day of October, 1902, an agree-  
ment was made in writing and signed by all the committee. Their de-  
cision was in fact that the Ryan Building Company should make  
certain additions as required by the specifications and should replace  
and refit the equipment previously installed by them, leaving the  
rest in existing order. The words would:  
"That the aforementioned additions and other modifications  
be installed and completed by the Ryan Building Company and that the  
Ryan Building Company be the owner of the same."  
The Ryan Building Company, after these agree-  
ments had been made, still be dissatisfied with the Ryan Building  
Company in the premises. On the 15th day of October, 1902, the Ryan Building  
Company immediately proposed that the Ryan Building Company should  
and should complete the same by December 1, 1902, unless provided  
an extension at that time.  
On December 7, 1902, a statement in writing signed by  
the committee sets forth that the committee stated the propo-  
sition in question on that day and made an announcement in order to  
reference of the Ryan Building Company in their decision of October

had been complied with and the A. C. Flynn Heating Company are entitled to the payment of \$4,400.00."

The evidence shows that after the preliminary decision of the arbitrators had been rendered on October 9th, plaintiff let to the firm of Mehring & Hanson, of which firm George Mehring, one of the arbitrators, was a partner, a contract to perform the work and make the alterations as specified by the arbitrators, for which it was agreed the firm would be paid by the plaintiff the sum of \$1500. The defendant contends that this was such misconduct as to vitiate the award, and without indicating that there was any corrupt or improper motive in the matter, we think it must be so held.

Plaintiff suggests that the award was unanimous and that the execution of this contract at the most could not have influenced more than one of the arbitrators and therefore could not have influenced the final decision to the injury of the defendant. The question of what conduct of an arbitrator may be considered improper to such an extent as to vitiate the award is discussed at length in Moshier v. Shear, 102 Ill., 169. It is there in substance held that any action which, on the part of a juror might amount to misconduct, will, as a general rule, amount to misconduct on the part of an arbitrator, and the opinion in that case points out in a forcible way the necessity that the arbitrators be guarded against influences of which they might not be even conscious. It cannot, we think, be said that these arbitrators, knowing that one of their number had a contract to do and had actually done the work upon which it was their duty to pass, would feel as free to criticize and condemn it as they would have felt had the work been done by another. The stream of justice should be kept above the suspicion of pollution from any source whatever. We think there can be no doubt that if a jury passing upon a case was afterwards found to have brought in a verdict under similar



... have concluded with the ... of the ...

... The ... of the ...

... Ministry ... that the ...

circumstances, a court would, without hesitation, set the verdict aside and award a new trial. It is exactly so with this award. We are inclined to think there was no corrupt motive; but to confirm an award rendered under such circumstances would be to set a dangerous precedent which might thereafter lead to grave injustice. Whatever the rights of the parties may be upon the contract, the plaintiff cannot recover upon the award.

The judgment is therefore reversed and the cause remanded.

REVERSED AND REMANDED.

McSurely, J., concurs.

Mr. Justice Johnston took no part in this decision.





3906a

TADEUS STARISLOVAITIS,  
Appellee,

vs.

WILLIAM USRLIS,  
Appellant.

APPEAL FROM CIRCUIT COURT OF  
COOK COUNTY.

234 I.A. 644

MR. PRESIDING JUSTICE HATCHETT  
DELIVERED THE OPINION OF THE COURT.

This appeal is by the defendant from a judgment in favor of the plaintiff in an action of forcible entry and detainer. The judgment was entered upon the verdict of a jury after motions for a new trial and in arrest of judgment were over-ruled.

The case was begun before a Justice of the Peace and was heard de novo upon appeal to the Circuit court.

The suit is based upon Clause 5 of Section 2 of the Forcible Detainer Act, which provides that "when a vendee, having obtained possession under a written or verbal agreement to purchase lands or tenements and having failed to comply with his agreement, withholds possession thereof after demand in writing by the person entitled to such possession," the action may be maintained.

The evidence tended to show that defendant came into possession of the premises in question by virtue of a written contract, and the first contention urged here is that this contract was not an agreement to purchase within the meaning of the act. The contract is in evidence and provided in substance for the exchange of certain real estate and other property by the owners thereof. In the popular sense, it may be true that an agreement to exchange is not an agreement to purchase. In a



100 - 10000

THE UNITED STATES OF AMERICA

IN SENATE

JANUARY 11, 1911

REPORT OF THE

COMMISSIONER OF THE

GENERAL LAND OFFICE  
RELATIVE TO THE

LANDS BELONGING TO THE UNITED STATES

OF THE PLAINLANDS IN AN AREA OF LANDS IN THE PLAINLANDS  
THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS  
FOR A LONG TIME AND IN THE PLAINLANDS ARE THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

AND THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

THE PLAINLANDS ARE THE PLAINLANDS IN THE PLAINLANDS

strictly legal sense, however, a purchase, according to Blackstone's definition, is an "acquisition of land or tenements by other means than descent or inheritance by one's own act or agreement;" and in Syc. vol. 32, p. 1264, purchase is defined as "A word with two significations - a popular but restricted one, and a legal but enlarged one. As a noun, in its popular and more limited sense: acquisition by way of bargain and sale or other valuable consideration, the transmission of property from one person to another by their voluntary act and agreement, founded upon a valuable consideration; the buying of real estate and of goods and chattels; that which is obtained for a price in money or its equivalent; acquisition for a valuable consideration; bargain. In its technical and larger sense, in case of land, the act of obtaining or acquiring title to lands and tenements by money, deed, gift, or any means, except by descent. The verb in its technical, broader sense refers to all titles, including those by devise acquired otherwise than by descent." We think there can be no doubt that the contract in evidence in a legal sense is of the kind specified in the forcible entry and detainer statute.

The defendant, however, contends in the second place that the evidence is not sufficient to uphold a finding; that the defendant failed to comply with the contract or agreement. Two juries have decided otherwise, and a careful reading of the testimony has convinced us not only that we cannot say the finding of the jury is in this respect contrary to the weight of the evidence, but must hold that the jury could not have properly made any other finding.

The next contention of the defendant is that no proper demand in writing was made for the possession of the premises involved, prior to the suit. He says that the alleged demand was defective in that it was addressed to the defendant





only, whereas the evidence shows that his wife Mary was in joint possession with him as tenant in common by virtue of the exchange contract to which defendant says she was a party. She did not, however, sign the contract, and that she was not otherwise a necessary party is apparent from the decisions in Wheeler v. Fish, 2 Ill. App. 447, and Booker v. Andersen, 35 Ill., 66.

The next contention of the defendant is that the description of the property in the demand is at variance with the contract and the complaint filed with the Police Magistrate. The complaint originally filed has not been abstracted, but the property in the contract is described as being situated at "1308 E. 31st, Town of Cicero, Illinois." It is conceded that the word "avenue," which should have followed 31st, has been omitted. We think, however, that either the word "avenue" or "street" would necessarily be implied and understood in the description given, and that the description is, therefore, reasonably certain. The evidence in the case leaves no doubt on this point.

The demand for possession asked only for the first floor of the building, but this is not inconsistent, as the evidence indicates that the second floor was occupied by a tenant who, recognizing plaintiff's rights, was paying rent to him. The evidence abundantly showed that defendant was withholding possession.

The defendant complains that the form of the verdict is defective in that it states that the jury finds the issue for the plaintiff, when the appropriate verdict would have been "Guilty" or "Not Guilty." However, the form of verdict does not leave any doubt as to the response of the jury to the issue, and it further appears that in several instructions requested by defendant and given by the court, a verdict in the form returned by the jury was asked. The defendant can not well complain of an error made at his special request.





Defendant also complains because the forms of verdicts submitted to the jury by the court were marked respectively with the numerals, one and two. He cites on this point People v. Marks, 351 Ill., 475, where it was held error for the court to hand to the jury a form verdict which had the word "given" marked in the margin. While we think it would have been the better practice not to mark the forms of verdicts by numerals, we hesitate to hold that it is error so to do. It must be assumed that the jury had some intelligence.

The defendant next contends that the verdict is void because the names of persons not sworn to try the case are signed thereto. It appears that the clerk wrote in the records the names of six of the jurors sworn as follows:

|                  |                   |
|------------------|-------------------|
| E. O. Guyton     | Charles Dressler  |
| Emil J. Bujadoux | Ignatz Weilandner |
| Anton Frejt      | Joe. Zak          |

While these names are signed to the verdict:

|                  |                  |
|------------------|------------------|
| Edw. O. Guyton   | Chas. Dressler   |
| Emil--- Bujadoux | Ignatz Wielander |
| Anton Jerejt     | Joseph Zak       |

It is perfectly evident that any variance in the names of the jurors was the result of clerical mistakes. The record specifically declares, "This day again come the parties to this suit by their attorneys respectively and the jury heretofore impaneled herein for the trial of said cause also come after hearing all the evidence adduced say: etc." It thus affirmatively appears that the jurors sworn to try the case returned the verdict. Moreover, this is a civil, not a criminal case, and in many other respects the case is distinguishable from Younger v. The State, 3 W. Va. 579, on which defendant relies.

It is also contended that the court erred in refusing to give to the jury an instruction offered by the defendant to the effect that in this action the title to the property in question was not involved; that the material question in the case, and one



There are also some other things which are not mentioned in the text, but which are of great importance. These are the things which are mentioned in the text, but which are not mentioned in the text.

The following were contacted and the results of their  
interviews are given in the report to the Bureau dated  
10/10/50. It appears that the above named persons are  
not the same as the persons named in the report to the  
Bureau dated 10/10/50.

10-10-68

2017年12月13日  
 2017年12月13日  
 2017年12月13日

1990年12月10日 星期一 晴 12月10日 星期一 晴

[illegible]

1950年10月1日  
1950年10月1日  
1950年10月1日

It is respectfully submitted that any violation in the  
conduct of the Service was the result of clerical mistakes. The  
Service specifically declared, "This day again some of the Service  
was not by their attorney's responsibility and the law enforcement  
agencies for the State of California and the State of New York  
and all the evidence should be left." It was ultimately  
found that the Service was in the same position and position.  
However, this is a civil, not a criminal case, and in many other  
cases the same is stated in the Memorandum v. The State.

... ..

... ..

which the jury was to determine, was the right to the possession of the premises. While the instruction in question probably stated a correct proposition of law, there was evidence in the case which might have led the jury to misunderstand the instruction, and we think, therefore, the court properly refused to give it.

Upon the whole record we are satisfied that substantial justice has been done, and the judgment of the trial court is affirmed.

AFFIRMED.

McSurely and Johnston, JJ., concur.



When the jury was in retirement, was the right to the possession of the premises. While the possession is given to the party who has a better title, there was evidence in the case which might have led the jury to believe that the defendant, and as such, plaintiff, the party who was in possession at the time.

From the above report we are satisfied that the evidence is sufficient to support the verdict of the jury, and is affirmed.

ATTEST,

Respectfully and obediently, W. J. BROWN.

3907a

PEOPLE OF THE STATE OF ILLINOIS  
ex rel. WILLIAM E. HESS, (Petitioner),  
Appellee,

vs.

EDWARD ZIFF, President, and HARRY  
E. BACHMAN, WILLIAM E. ELLIS, CLAUDE  
E. FITCH, PAUL A. HOFFMAN, LOUIS T.  
STARKEL and FREDERICK TILT, Members  
of the Board of Trustees of the  
Village of Wilmette, (Respondents),  
Appellants.

APPEAL FROM CIRCUIT  
COURT OF COOK COUNTY.

234 I.A. 645

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the Board of Trustees of the Village of Wilmette from an order directing that a writ of mandamus issue commanding the trustees in their official capacity to approve of a certain plat of real estate of which petitioner is the owner, situated in said village.

There is no dispute as to the facts, which were presented to the court by stipulation, and tended to show that the relator is the owner of certain real estate situated in the village in question, which is described as lot 11 in block 5, and that, desiring to subdivide the same, he presented a plat thereof to the village board, approval of which the board, after consideration, refused to give for the reason, as stated, that the plat did not comply with ordinances enacted by the village. One of these ordinances is known as the "Zoning Ordinance" and divides the village into three districts described respectively as District "A" which is a residence district, "B," which is a commercial district, and "C," which is an industrial district. The land which petitioner platted and the block in which his land is located are situated in District "A."

The Zoning ordinance is known as No. 1291, and the



100 - 10000

OFFICE OF THE STATE OF ILLINOIS  
IN THE OFFICE OF THE ATTORNEY GENERAL  
JANUARY 1, 1900

100

THE STATE OF ILLINOIS, DEPARTMENT OF THE ATTORNEY GENERAL,  
JANUARY 1, 1900, AT THE OFFICE OF THE ATTORNEY GENERAL,  
IN THE CITY OF CHICAGO, ILLINOIS.

THE STATE OF ILLINOIS, DEPARTMENT OF THE ATTORNEY GENERAL,

IN THE OFFICE OF THE ATTORNEY GENERAL,

This is to certify that the Board of Trustees of the  
Village of Chicago have on their records a list of names  
of persons who have been appointed to the office of  
a certain class of town commissioners in the village,  
located in said village.

There is no change in the list, which was  
made to the court by original, and tested to show that the  
master in the court of certain real estate situated in the village  
in question, which is situated on lot 21 in block 7, and road 14,  
lying to subdivise the same, he presented a list of names of the  
said persons, who were at that time, after investigation,  
found to give for the reason, as stated, that the said list was  
made by a person named by the village. And it is  
further stated that the said list was made by a person named by the village  
and that the said list was made by a person named by the village.  
And it is further stated that the said list was made by a person named by the village  
and that the said list was made by a person named by the village.

village trustees duly enacted an amendment thereto known as Section 911A, which contains provisions set up in the answer to the effect that "each and every lot shall have a frontage of not less than fifty feet and the number of lots in each acre subdivided shall not exceed five." This amendment to the ordinance seems to have been passed pursuant to the authority conferred by the act approved June 28, 1921, in force July 1, 1921, and known as "The zoning Law." See Cahill's Illinois Revised Statutes, 1923, sections 521 to 535, pages 547 to 550. The stipulation recites that lot 11 in question is contained in a block in the village bounded on the north by a public street known as Elmwood avenue, on the south by another public street known as Forest avenue, on the west by another public street known as 12th street, and on the east by another public street known as 11th street; that block 5 is one of fifteen blocks, all of uniform arrangement, subdivided into lots as shown by the plat attached and made a part of the stipulation, and that said lot 11 of block 5 is located within the district described as "A" residence district, in ordinance No. 1281.

It appears from the plat attached to the stipulation that the fifteen blocks surrounding block 5 are all substantially blocks in which the lots have frontages of not less than fifty feet and in which there are not more than five lots to the acre.

It appears from the stipulation that the plat submitted by the petitioner does not comply with the provisions of the ordinance, in that the effect of the subdivision which petitioner asked to be approved would operate to make more than five lots to the acre.

It is the contention of the defendants that the court therefore erred in ordering that a mandamus issue, for the reason that the right to have a plat approved is a statutory one, and that reasonable conditions may be imposed to the enjoyment of that right. See Halsell v. Ferguson, 109 Tex. 144; Carlin v. Peerless





Gas Light Co., 283 Ill., 144, 146; Mather v. Parthurat, 302 Ill., 238; People v. Massieen, 300 Ill. App. 66, affirmed 279 Ill., 315. The relator, however, argues ingeniously that the provision of the ordinance that the number of lots in each acre subdivided shall not exceed five, is not applicable to a situation such as appears here, for the reason that the property subdivided is less than one acre.

It is apparent, however, that if this contention is sustained the effect practically would be the nullification of the ordinance, since the owner, under such construction, could, as he might wish, render the ordinance wholly inapplicable in any given case, by submitting plats of his land containing slightly less than one acre.

While it is true, as the relator argues, that an ordinance should, under certain circumstances, be strictly construed, there is no necessity for such construction where, as here, the language of the ordinance is plain and free from ambiguity.

In the construction of an ordinance as in the construction of a statute, the object should be to find the legislative intent and to that end the object sought to be attained and the wrong which the law was intended to remedy should always be kept in view. People v. Chicago Railways, 270 Ill., 105; People v. Emerson, 302 Ill., 304. The construction for which the petitioner contends would effectually thwart the intention of the legislature as expressed in the plain and unambiguous language of the ordinance, and cannot therefore be adopted.

The relator further contends, however, that the right to regulate the subdivision of real estate by granting or withholding the approval of plats exists (if at all) only in so far as the subdivision involves streets, alleys and public grounds. He says that there are no streets, alleys or public grounds involved or affected by the proposed subdivision; that it conforms to ex-





isting subdivisions, streets and alleys, and that the city is therefore without right or authority to enforce the provisions of the ordinance. The power of the city in this respect seems to be derived from the statute above pointed out, as also from the act of March 21, 1874, entitled "An Act Revising the Law in Relation to Plats," Cahill's Statutes 1923, chapter 109, pages 2634 to 2635. This act in substance provides that whenever the owner of lands within a city wishes to subdivide the same he shall cause the same to be surveyed and a plat thereof to be made, which plat, when completed, shall be certified by the surveyor and acknowledged by the owner of the land or his attorney duly authorized in the same manner as deeds of land; that the certificates of the surveyor and of acknowledgment, together with the plat, shall be recorded in the recorder's office of the county in which the land is situated, and may then be used in evidence to the same extent and with like effect, as in case of deeds; that such acknowledgment and recording shall be held in law and in equity to be a conveyance in fee simple of such portions of the premises platted as are marked or noted on such plat as donated or platted to the public; and that the premises intended for any street, alleyway, common or other public use in any city, village or town or addition thereto, shall be held in the corporate name thereof in trust to and for the uses and purposes set forth or intended. Section 14 of chapter 115, Cahill's Illinois Revised Statutes, 1923, makes it unlawful for any recorder to record any map, plat or subdivision of land situated in an incorporated city, town or village, until the same shall have been approved by the legislative authority or officer thereof, and provides a penalty for the violation of the section by any recorder. Section 5 of article 10 of chapter 24, being the Cities and Villages Act, specifically states that the city council or board of trustees shall have power to provide by ordinance that any map, plat or subdivision of any block, lot, sub-lot or part thereof, or of any



...that the city is  
therefore without right or authority to exercise the provisions of  
the ordinance. The power of the city in this respect seems to be  
derived from the statute above pointed out, as also from the act  
of March 27, 1887, entitled "An act relating to the law in relation to  
cities," Chapter 120, Chapter 120, pages 222 to 223.  
This act in substance provides that whenever the owner of land  
within a city wishes to subdivide the same he shall cause the same  
to be surveyed and a plat thereof to be made, which plat, when  
completed, shall be certified by the surveyor and acknowledged by  
the owner of the land as his attorney duly authorized in the same  
manner as books of land; that the certification of the surveyor and  
of acknowledgment, together with the plat, shall be recorded in the  
recorder's office of the county in which the land is situated, and  
may then be used in evidence to the same extent and with like ef-  
fect, as in case of deeds; that such acknowledgment and recording  
shall be held in law and in equity to be a conveyance in fee simple  
of each portion of the premises divided, as the record so made  
may first be recorded or placed in the public; and that the plat  
may be used in any respect, except, however, to show the boundaries  
in any city, village or town or addition thereto, shall be held  
in the same manner as a deed in cases as and for the same use  
purpose and effect as a deed. Section 12 of Chapter 120, Chapter 120  
entitled "An act relating to the law in relation to cities," Chapter 120, pages 222 to 223, makes it unlawful for any person  
to record any plat, map or subdivision of land situated in an in-  
corporated city, town or village, until the same shall have been  
approved by the legislative authority of either thereof, and  
provides a penalty for the violation of the statute by any person.  
Section 2 of article 12 of Chapter 120, which the city and village  
has specifically stated that the city council or board of trustees

piece or parcel of land shall be submitted to the city council or board of trustees or to some officer to be designated by such council or board of trustees for their or his approval, and that in such cases no such map, plat or subdivision shall be entitled to record in any proper county or have any validity until it shall have been so approved. These are the only provisions of the statutes of the state bearing upon this subject to which our attention has been called. We do not find anything in the language of the statute which would limit the power granted in the manner in which the relator suggests. Chapter 109 of the Revised Statutes has been construed in the cases of People v. Board of Trustees of the Village of Mounds, 122 Ill. App. 449, and People v. Massieen, 200 Ill. App., 86, affirmed in the same case by the Supreme Court in 279 Ill. 314. The opinion of the Appellate Court in People v. Massieen, *supra*, states: "It was given to the Village Board to see that the plat was made in compliance with any reasonable regulations or requirements by ordinance respecting the size of the blocks and lots, the direction and width of the streets and alleys, or other detail of the survey," while the Supreme Court in the same case stated: "It (the village or city) may by ordinance, no doubt, regulate the direction and width of the streets and alleys and a location of public grounds and require conformity with existing subdivisions, streets and alleys, but such regulation must be by a general ordinance applying to all alike."

The relator argues with some force that these statements are dicta not necessary to the decision. However that may be, the language used seems to have been carefully chosen and indicates a construction of the statute which is inconsistent with the construction for which the relator contends. Indeed, there is no language in the statute from which a construction such as the relator argues for can be inferred.





The relator, however, further contends that the ordinance in question is unreasonable. It is said that the ordinance is purely aesthetic in its purpose and is therefore void under the rule laid down by our Supreme Court in Haller Sign Works v. Training School, 249 Ill. 436, People v. City of Chicago, 261 Ill., 16, and People v. Kaul, 302 Ill., 318. We are not unmindful of the force of this argument if the question of constitutionality of the ordinance were before us. It is not. Excluding constitutional questions and granting the validity of the power conferred, we think the ordinance expresses a reasonable exercise of the power. The line which divides those considerations which are purely aesthetic from others which are vitally related to the public health, morals, comfort or general welfare, when considered in relation to the exercise of the police power of the state, has not as yet been drawn with certainty. Perhaps that line cannot be accurately laid down. If this ordinance is to be declared invalid, we think it should only be after consideration by the highest court of the State. This court is inclined to the view that the exercise of such power as the provisions of the ordinance call for is justified on the ground that it is conducive to the comfort, health and general welfare of the people of the village. As our complex civilization becomes more complex it is apparent that no one can live unto himself alone and that individual freedom must be restricted for the general good. In conformity with this view, the judgment of the trial court is reversed.

REVERSED.

McSurely and Johnston, JJ., concur.





3908a

ANNA LUKAS,  
Appellee,  
vs.  
JOSEPH LUKAS,  
Appellant.

APPEAL FROM CIRCUIT COURT OF  
COOK COUNTY.

234 I.A. 645

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant and cross-complainant from a decree which dismissed the original bill of complaint and cross-bill for want of equity, and which further ordered, adjudged and decreed that the cross-complainant pay to the cross-defendant her costs to be taxed by the clerk of the court, and a further sum of \$43.50 for stenographic services rendered in the cause, and a further sum of \$150 as solicitor's fees.

The complainant has not appeared in this court in support of the decree. The record shows that on March 26, 1923, complainant filed a bill in which she alleged her marriage to the defendant appellant and certain acts of cruelty on his part, on account of which she prayed a decree of divorce.

The defendant appeared and answered the bill, admitting the marriage and birth of children, as alleged, but denying the acts of cruelty. Certain orders for the payment of alimony and solicitor's fees were entered and thereafter defendant filed a cross-bill by which he prayed a divorce from his wife on the charge of adultery. She answered and the cause was heard upon the issues as made up under the bill and cross-bill and answers thereto.

The decree of the court specifically finds that the allegations of the bill charging defendant appellant with cruelty



time = 0

57

2000年12月

This is a good fit for the definition of cross-sectional

How long does the child usually stay with the grandchild? (Please specify if any)

10-11-68, 10-12-68, 10-13-68, 10-14-68, 10-15-68, 10-16-68, 10-17-68, 10-18-68, 10-19-68, 10-20-68, 10-21-68, 10-22-68, 10-23-68, 10-24-68, 10-25-68, 10-26-68, 10-27-68, 10-28-68, 10-29-68, 10-30-68, 10-31-68, 11-1-68, 11-2-68, 11-3-68, 11-4-68, 11-5-68, 11-6-68, 11-7-68, 11-8-68, 11-9-68, 11-10-68, 11-11-68, 11-12-68, 11-13-68, 11-14-68, 11-15-68, 11-16-68, 11-17-68, 11-18-68, 11-19-68, 11-20-68, 11-21-68, 11-22-68, 11-23-68, 11-24-68, 11-25-68, 11-26-68, 11-27-68, 11-28-68, 11-29-68, 11-30-68, 12-1-68, 12-2-68, 12-3-68, 12-4-68, 12-5-68, 12-6-68, 12-7-68, 12-8-68, 12-9-68, 12-10-68, 12-11-68, 12-12-68, 12-13-68, 12-14-68, 12-15-68, 12-16-68, 12-17-68, 12-18-68, 12-19-68, 12-20-68, 12-21-68, 12-22-68, 12-23-68, 12-24-68, 12-25-68, 12-26-68, 12-27-68, 12-28-68, 12-29-68, 12-30-68, 12-31-68, 1-1-69, 1-2-69, 1-3-69, 1-4-69, 1-5-69, 1-6-69, 1-7-69, 1-8-69, 1-9-69, 1-10-69, 1-11-69, 1-12-69, 1-13-69, 1-14-69, 1-15-69, 1-16-69, 1-17-69, 1-18-69, 1-19-69, 1-20-69, 1-21-69, 1-22-69, 1-23-69, 1-24-69, 1-25-69, 1-26-69, 1-27-69, 1-28-69, 1-29-69, 1-30-69, 1-31-69, 2-1-69, 2-2-69, 2-3-69, 2-4-69, 2-5-69, 2-6-69, 2-7-69, 2-8-69, 2-9-69, 2-10-69, 2-11-69, 2-12-69, 2-13-69, 2-14-69, 2-15-69, 2-16-69, 2-17-69, 2-18-69, 2-19-69, 2-20-69, 2-21-69, 2-22-69, 2-23-69, 2-24-69, 2-25-69, 2-26-69, 2-27-69, 2-28-69, 2-29-69, 2-30-69, 3-1-69, 3-2-69, 3-3-69, 3-4-69, 3-5-69, 3-6-69, 3-7-69, 3-8-69, 3-9-69, 3-10-69, 3-11-69, 3-12-69, 3-13-69, 3-14-69, 3-15-69, 3-16-69, 3-17-69, 3-18-69, 3-19-69, 3-20-69, 3-21-69, 3-22-69, 3-23-69, 3-24-69, 3-25-69, 3-26-69, 3-27-69, 3-28-69, 3-29-69, 3-30-69, 3-31-69, 4-1-69, 4-2-69, 4-3-69, 4-4-69, 4-5-69, 4-6-69, 4-7-69, 4-8-69, 4-9-69, 4-10-69, 4-11-69, 4-12-69, 4-13-69, 4-14-69, 4-15-69, 4-16-69, 4-17-69, 4-18-69, 4-19-69, 4-20-69, 4-21-69, 4-22-69, 4-23-69, 4-24-69, 4-25-69, 4-26-69, 4-27-69, 4-28-69, 4-29-69, 4-30-69, 5-1-69, 5-2-69, 5-3-69, 5-4-69, 5-5-69, 5-6-69, 5-7-69, 5-8-69, 5-9-69, 5-10-69, 5-11-69, 5-12-69, 5-13-69, 5-14-69, 5-15-69, 5-16-69, 5-17-69, 5-18-69, 5-19-69, 5-20-69, 5-21-69, 5-22-69, 5-23-69, 5-24-69, 5-25-69, 5-26-69, 5-27-69, 5-28-69, 5-29-69, 5-30-69, 5-31-69, 6-1-69, 6-2-69, 6-3-69, 6-4-69, 6-5-69, 6-6-69, 6-7-69, 6-8-69, 6-9-69, 6-10-69, 6-11-69, 6-12-69, 6-13-69, 6-14-69, 6-15-69, 6-16-69, 6-17-69, 6-18-69, 6-19-69, 6-20-69, 6-21-69, 6-22-69, 6-23-69, 6-24-69, 6-25-69, 6-26-69, 6-27-69, 6-28-69, 6-29-69, 6-30-69, 7-1-69, 7-2-69, 7-3-69, 7-4-69, 7-5-69, 7-6-69, 7-7-69, 7-8-69, 7-9-69, 7-10-69, 7-11-69, 7-12-69, 7-13-69, 7-14-69, 7-15-69, 7-16-69, 7-17-69, 7-18-69, 7-19-69, 7-20-69, 7-21-69, 7-22-69, 7-23-69, 7-24-69, 7-25-69, 7-26-69, 7-27-69, 7-28-69, 7-29-69, 7-30-69, 7-31-69, 8-1-69, 8-2-69, 8-3-69, 8-4-69, 8-5-69, 8-6-69, 8-7-69, 8-8-69, 8-9-69, 8-10-69, 8-11-69, 8-12-69, 8-13-69, 8-14-69, 8-15-69, 8-16-69, 8-17-69, 8-18-69, 8-19-69, 8-20-69, 8-21-69, 8-22-69, 8-23-69, 8-24-69, 8-25-69, 8-26-69, 8-27-69, 8-28-69, 8-29-69, 8-30-69, 8-31-69, 9-1-69, 9-2-69, 9-3-69, 9-4-69, 9-5-69, 9-6-69, 9-7-69, 9-8-69, 9-9-69, 9-10-69, 9-11-69, 9-12-69, 9-13-69, 9-14-69, 9-15-69, 9-16-69, 9-17-69, 9-18-69, 9-19-69, 9-20-69, 9-21-69, 9-22-69, 9-23-69, 9-24-69, 9-25-69, 9-26-69, 9-27-69, 9-28-69, 9-29-69, 9-30-69, 10-1-69, 10-2-69, 10-3-69, 10-4-69, 10-5-69, 10-6-69, 10-7-69, 10-8-69, 10-9-69, 10-10-69, 10-11-69, 10-12-69, 10-13-69, 10-14-69, 10-15-69, 10-16-69, 10-17-69, 10-18-69, 10-19-69, 10-20-69, 10-21-69, 10-22-69, 10-23-69, 10-24-69, 10-25-69, 10-26-69, 10-27-69, 10-28-69, 10-29-69, 10-30-69, 10-31-69, 11-1-69, 11-2-69, 11-3-69, 11-4-69, 11-5-69, 11-6-69, 11-7-69, 11-8-69, 11-9-69, 11-10-69, 11-11-69, 11-12-69, 11-13-69, 11-14-69, 11-15-69, 11-16-69, 11-17-69, 11-18-69, 11-19-69, 11-20-69, 11-21-69, 11-22-69, 11-23-69, 11-24-69, 11-25-69, 11-26-69, 11-27-69, 11-28-69, 11-29-69, 11-30-69, 12-1-69, 12-2-69, 12-3-69, 12-4-69, 12-5-69, 12-6-69, 12-7-69, 12-8-69, 12-9-69, 12-10-69, 12-11-69, 12-12-69, 12-13-69, 12-14-69, 12-15-69, 12-16-69, 12-17-69, 12-18-69, 12-19-69, 12-20-69, 12-21-69, 12-22-69, 12-23-69, 12-24-69, 12-25-69, 12-26-69, 12-27-69, 12-28-69, 12-29-69, 12-30-69, 12-31-69, 1-1-7

Downloaded from ascelibrary.org by New York University on 06/09/14. Copyright ASCE, all rights reserved.

Copyright © 2004 John Wiley & Sons, Ltd.

U.S. Patent and Trademark Office, Washington, DC 20503

Copyright © 2003 by John Wiley & Sons, Inc.

... ..

CONFIDENTIAL

...and the ...

DECLASSIFIED AUTHORITY: 68 CFR 1.57(a)

Journal of the American Statistical Association

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

And, finally, as, according to article 100, paragraph 1, of the Italian Constitution, the judicial power is vested in the judicial branch, the judicial branch is the only one that can exercise the power of judicial review.

Revised 10/1/83

Although the defendant has been ever not a resident and usually

[illegible]

THE UNIVERSITY OF CHICAGO

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

are not true, and also that the allegations of the cross-bill against the complainant are not true.

The defendant argues here for reversal of that part of the decree which directs the payment of costs, stenographer's services and solicitor's fees, upon the theory that in proceedings in chancery it is incumbent on the party seeking to sustain a decree in his favor to preserve the evidence upon which it is based in the record in some proper form, and that when this is not done no presumption shall be entertained that evidence sufficient to sustain the decree was heard. He says that the order of the court as to these items is not supported by any finding of fact or certificate of evidence, and that, therefore, the decree should be reversed. The rule insisted upon is the general rule in chancery proceedings, to which there is, however, an exception which defendant has failed to note. As is stated in Berg v. Berg, 223 Ill., 211:

"In cases where the parties are entitled to a trial by jury, the rule is different and the evidence does not have to be thus preserved. This has been held to be true in cases of divorce and formerly in cases of mechanic's lien. The presumption in such cases being in favor of the verdict until it is successfully impeached in some way provided by law. Becker v. Becker, 79 Ill. 532; Thatcher v. Thatcher, 17 Ill. 66; Lewis v. Moss, 62 Ill., 574."

See also Rybakowitz v. Rybakowitz, 290 Ill. 550, and French v. French, 302 Ill., 152.

For the reasons indicated the decree of the Circuit court is affirmed.

AFFIRMED.

McSurely and Johnston, JJ., concur.



it was first, and also that the allegations in the second

against the complainant are not true.

The defendant argues that the payment of that part of

the money which exceeds the payment of costs, defendant's ex-

posed and collection's fees, upon the theory that in proceeding in

summary it is incumbent on the party seeking to maintain a return

in his favor to traverse the evidence upon which it is based in

the return in some proper form, and that when this is not done an

assumption shall be made that such evidence is correct in all

respects the facts are true, and that the return of the party in

favor of the return is not supported by any finding of fact or evidence

of evidence, but that, therefore, the return should be sustained

and the return upon it the proper rule is summary judgment,

in which there is, however, an exception when defendant has failed

to move, as is stated in Smith v. Smith, 200 Ill. 411.

"In cases where the parties are entitled to a trial by

jury, the rule is different and the evidence does not have to be

traversed. This has been held in the case of Smith.

There is no exception in cases of summary judgment. The presumption

is made upon the return of the party in favor of the return.

This presumption is not way traveled by Smith v. Smith.

It is stated in Smith v. Smith, 200 Ill. 411, 412.

It is also stated in Smith v. Smith, 200 Ill. 411, 412.

Smith v. Smith, 200 Ill. 411, 412.

The rule is stated in Smith v. Smith, 200 Ill. 411, 412.

It is also stated in Smith v. Smith, 200 Ill. 411, 412.

It is also stated in Smith v. Smith, 200 Ill. 411, 412.

3989a

ILLINOIS TRUST & SAVINGS BANK,

vs.

HUGO H. YOUNG,

Appellee.

On Appeal of MARY A. MONOGUE,  
Administratrix,

Appellant.

APPEAL FROM CIRCUIT COURT

OF COOK COUNTY.

234 I.A. 645

MR. PRESIDING JUSTICE MATCHETT

DELIVERED THE OPINION OF THE COURT.

In this case Mary A. Monogue as administratrix of the estate of one Kate Thellie appeals from a decree entered by the court on a bill of interpleader brought by the Illinois Trust & Savings Bank to determine the rightful owner of an account in that bank in the sum of \$8517.95, which account stood in the name of said Kate Thellie at the time of her death. The decree awards the same to the defendant, Hugo H. Young. The abstract of the record filed by the administratrix fails to comply with rule 18, which provides that "it must be sufficient to present fully every error and exception relied upon." The defects in this respect are so serious as to deserve severe condemnation.

The appellee has, however, presented a further abstract, from which we are able to give the case consideration upon its merits. After the beginning of the suit on April 20, 1923, the complainant bank paid to the clerk of the Circuit court the amount of said account to be held subject to the order of the court.

The findings of the decree which seem to be supported by the evidence are that on February 28, 1916, Hugo H. Young and Kate Thellie opened a joint savings account with the Illinois Trust & Savings Bank, at which time they executed an agreement 4-



RECEIVED

1904

1905

1906

1907

1908

1909

RECEIVED

1910

1911

1912

1913

1914

1915

1916

1917

1918

1919

1920

1921

1922

1923

1924

1925

1926

1927

1928

"701574 Illinois Trust & Savings Bank

It is hereby agreed that savings account No. 701574 with you is owned by us as joint tenants, with the right of survivorship; you are authorized hereby to pay and charge to said account all receipts or orders for money allowed by us, or either of us or by the survivor of us.

Hugo R. Young  
Kate Thellie."

The bank number of this account was 701574, and a savings pass book under this number was issued to Young and Thellie jointly. Deposits were made by Young and Thellie to the credit of this account until about March 1, 1917, when there was the sum of \$2323.56 to the credit of said joint account.

March 1, 1917, the total amount to the credit of the said joint account was transferred on the books of the bank by Kate Thellie and by her alone, and without the consent or knowledge of Young, to a savings account opened by her on that date in her name in the same bank, which account was numbered 721695. The moneys standing to the credit of the joint account were not withdrawn from the bank, but were merely credited to the account opened in the name of Kate Thellie on the books of the bank, and were not thereafter withdrawn from the bank but were with the interest accrued on deposit with the bank at the time of the death of Kate Thellie and at the time of the filing of the Bill on April 20, 1923.

After March 1, 1917, from time to time amounts continued to be deposited in this account until the sum of \$5276.86 was to the credit of said account at the time of the death of Kate Thellie, which occurred September 17, 1921, at Chicago, Illinois. The said sum had then increased to the amount for which the decree was entered. The number of the said account had, however, by reason of change in the methods of the bookkeeper, been changed to 160358.

The decree specifically finds that the attempted transfer by Kate Thellie in March, 1917, was made without the authority, knowledge or consent of the defendant, Hugo R. Young, and that he did not have any knowledge thereof nor know that the savings passbook



THE ABOVE INFORMATION WAS OBTAINED FROM THE FILES OF THE  
FEDERAL BUREAU OF INVESTIGATION, WASHINGTON, D. C.  
ON APRIL 10, 1964. IT IS BEING FURNISHED TO YOU FOR YOUR  
INFORMATION ONLY. IT IS NOT TO BE USED FOR ANY OTHER  
PURPOSE. IT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY  
MANNER. IT IS NOT TO BE DISCLOSED TO ANY OTHER  
PERSON OR ORGANIZATION. IT IS NOT TO BE USED FOR  
ANY OTHER PURPOSE. IT IS NOT TO BE REPRODUCED OR  
TRANSMITTED IN ANY MANNER. IT IS NOT TO BE  
DISCLOSED TO ANY OTHER PERSON OR ORGANIZATION.

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

100-443881-100

average year when this number was raised to four and  
the following year was raised to five. The following  
table shows the number of cases of this disease in the  
United States from 1900 to 1917. The number of  
cases of this disease in the United States from 1900 to  
1917 was 1,000,000.

DATE OF ISSUE: 01/01/2001

and John Adams was admitted on the basis of the fact that he was a resident of the town of Andover, and that he was a member of the Andover Baptist Church. The fact that he was a member of the Andover Baptist Church was not a condition of his admission to the office of Justice of the Peace, but it was a fact which was known to the Andover Board of Selectmen at the time of his admission to the office. The fact that he was a member of the Andover Baptist Church was not a condition of his admission to the office of Justice of the Peace, but it was a fact which was known to the Andover Board of Selectmen at the time of his admission to the office.

After being in 1957, from this time onwards a number of other

The above mentioned items are the property of the Government of the United States of America and are being loaned to the Government of the Republic of the Philippines for the purpose of the study of the Philippine economy.

evidenced in said account was one originally issued when the joint account was opened by him and the said Kate Thellie, and that he did not know otherwise until September 20, 1931, after the death of said Kate Thellie, when he presented himself at the bank and attempted to withdraw the funds therefrom.

Kate Thellie was a widow whose husband had been dead for over thirty years. She had two children, a boy and a girl, one of whom died about 1909, the other about 1910. She and Young had been making their home together for about twenty-eight years prior to her death and were doing so at that time. Young was at first simply a roomer in her home, but subsequently and during the latter years of her life paid the rent for the premises occupied by them. He was during all that time and now is a bachelor. Kate Thellie, subsequent to the death of her husband, lost what money she had in a store venture and subsequently took in washing to earn a living, for which she received about \$25 a month. She also took in roomers, including of the defendant Young and for a part of the time a young girl, who paid her \$4 a week. Subsequently, for a number of years and until the early part of 1919, she was employed as a scrubwoman in the County building in Chicago, receiving during part of the time compensation of \$30 a month, which was subsequently annually increased in amounts of \$2.50 to \$5 a month until at the time she ceased to be employed by the County she was receiving \$65 a month. Subsequent to her employment by the County she did some work as a janitress during a part of the time for three years, and her total income from such work was \$15 a month. During this time she was in ill health and in the care of a physician for a great part of the time, and she paid out \$155 for a physician's services. She was a woman in very modest circumstances and her income was barely sufficient to provide her with the necessities of life.





Young was in the painting and decorating business.

From May 1, 1919, to November, 1921, he was a member of a partnership, the income from which was divided between him and his partner equally and they did all the work. During the year 1919, after May 1st, the firm collected \$2204.75; in the year 1920, \$4503.75; and during the year 1921, \$4204.80. The cost of material was not in excess of twelve to fifteen per cent of the totals collected. Before entering into this partnership Young was in the painting and decorating business for himself, and during that period for about ten years worked for a real estate firm from which he received about \$200 a month for his work in painting and decorating.

On numerous occasions during the years 1918 to 1921, Kate Thellie collected money for work done by Young, and the moneys deposited in this account were practically all his earnings and property. At the time of the death of Kate Thellie the passbook No. 160688, formerly known as No. 721605, was in a tin box in the flat occupied by Young and Kate Thellie. September 20, 1921, Young went to the bank, taking with him the savings passbook, and drew an order for the amount to the credit thereof and presented it with the passbook to the bank. The bank refused to pay the order, claiming there was an irregularity in connection with the account. This was the first time Young learned of any attempt to change the joint account opened by him and Kate Thellie on February 28, 1916.

The administratrix in her argument suggests that the decree is not supported by the evidence, but does not point out the specific evidence in the record which would tend to show that any one of the material findings is contrary to the weight of it. Under the facts as found, it would seem according to the decision of this court in Illinois Trust & Savings Bank v. Van Vlack, Executor, 228 Ill. App. 573, and the decision of the Supreme Court affirming



Young was in the painting and contracting business.  
From May 1, 1910, to November, 1910, he was a member of a partnership, the income from which was divided between him and his partner equally and they did all the work. During the year 1910, when May 1st, the firm collected \$2201.75; in the year 1911, \$1200.75; and during the year 1912, \$1200.00. The year of 1912 was not in excess of twelve or fifteen per cent of the profits collected. Thereafter entering into this partnership Young was in the painting and contracting business in 1913, and in 1914, when he received about ten years' worth of a small estate from which he received about \$200 a month for his share in painting and contracting. In numerous instances during the years 1911 to 1912, and 1913, Young collected money for work done by himself, and the money deposited in this account were credited to his earnings and property. At the time of the death of Kate Thellie the partnership known as J. C. Young, was in a bad way in the bank, and was called by Young and Kate Thellie. November 20, 1911, Young went to the bank, taking with him the savings passbook, and gave an order for the amount of the credit deposit and presented it with the passbook to the bank. The bank refused to pay the order, thinking there was an irregularity in connection with the account. This was the first time Young learned of any attempt to remove the joint account opened by him and Kate Thellie on February 20, 1911.

The authorities in New York suggest that the answer is not supported by the evidence, but that was not the result of evidence in the record which would lead to that conclusion. The evidence is contrary to the finding of it, and the facts are found, it would seem according to the evidence.

this court in the same case as reported in 310 Ill., 185, that the writing executed by Hugo H. Young and Kate Thellie created a joint and several interest in this bank account, with the right of survivorship in the one upon the death of the other.

We do not understand that the administratrix seriously contends otherwise, but she argues that the facts in the case indicate that there was a severance prior to the death of Kate Thellie and that, since the jointure was thus destroyed the decree should have been in her favor. Would the facts as established by the uncontradicted testimony that on March 1, 1917, Kate Thellie went alone to the bank and drew an order upon the joint account and opened another account in her name, and that the bank charged the amount of the order to the joint account and credited it to the account opened up in her name at that time, amount to a severance of the jointure? It is to be noted that the bank did not pay out any money on the order and that the money which represented their joint account was never withdrawn or taken from the bank. It was, as the cashier for the bank testified, merely a bookkeeping transaction.

As defendant Young contends, we think the most that can be claimed is that the actions of Kate Thellie amounted to a taking possession of the joint property, and we know of no case and no cases are cited in the briefs which would indicate that the taking possession of joint property by one of the joint tenants, without the knowledge of the other, will amount to a severance. It is undoubtedly the law that a joint tenancy with the right of survivorship may be severed by a conveyance, which is voluntary or involuntary, of the interest of one of the joint tenants, the reason for this being that the unity of title and of interest is destroyed by such a conveyance and the interest of the parties thereby changed into a tenancy in common. Spadoni v. Frige, 307





111. 32. The most, however, that can be said here is that there was a change of possession, but the possession of one joint tenant is the possession of all. Custer v. Hall et al., 71 W. Va. 119; Roberts, Admr. v. Morgan, 30 Wt. 319; Sullivan v. Sullivan, 179 Ky. 686, and Cortes v. Oliva, 33 Phillipine Reports, 480.

It may be added that other evidence in the record indicating that the larger part of this account was the savings of Young gives him a position which appeals very strongly to a court of equity. Whether such a court would impress a trust upon this property for the purpose of protecting his rights therein, while argued in the briefs with numerous citation of authorities, it is unnecessary either to discuss or decide in view of our conclusions above stated.

The decree is just and is affirmed.

AFFIRMED.

McSurely and Johnston, JJ., concur.





3910a

CHICAGO FANCY FURNITURE COMPANY,  
a Corporation,

Appellant,

vs.

JOHN HERMITS,

Appellee.

APPEAL FROM CIRCUIT COURT  
OF COOK COUNTY.

234 I.A. 645

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THE OPINION OF THE COURT.

This appeal is by the defendant from a judgment in favor of the plaintiff in an action of replevin entered upon the verdict of a jury.

The property involved is six buffets, six china cabinets or silver chests and six serving tables, which the affidavit of plaintiff alleged to be of the value of \$1114.

By the consent of the parties the court instructed the jury to render a verdict finding the right of property in the plaintiff, and that the right of possession was in the plaintiff, subject only to the lien of the defendant for the amount of the balance of the purchase price, which amount was submitted to the jury as an issue to be determined under the evidence. The jury returned a verdict, fixing this amount at the sum of \$1435.15.

The plaintiff complains upon this appeal that the finding as to the amount of the unpaid purchase price of the goods is not sustained by the evidence, and plaintiff has not appeared in this court to support the judgment.

An examination of the evidence discloses that there was no agreed price between the parties, and that there is no evidence from which the jury could have properly found that the sum fixed by its verdict was the fair, reasonable price at the time and place in question. It follows upon elementary principles,



1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

1984-1985

100

Copyright © 2004 John Wiley & Sons, Ltd.  
J. Polym. Sci. Part A: Polym. Chem. 42: 1033–1044 (2004)  
DOI: 10.1002/pola.20000

© 2000 Blackwell Science Ltd

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

Older people in the United States are

Get more business advice. Visit us at [MJBiz101.com](http://MJBiz101.com) today!

1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

The present layout is in part due to the

...the ...

U.S. DEPARTMENT OF JUSTICE

and international issues with various UN and EC bodies and UN

© 2000 Blackwell Science Ltd *Journal of Internal Medicine* 247: 391–397

... ..

100-443887-100

... and the ...

we have to be concerned with the following.

— 100 —

1992-1993

and to receive another \$1000 and to receive 50% of the initial

... ..

... ..

and will continue to operate all 16 roll-upers at

the use of which would have enabled our newsmen to have better access to

1. The first of these is the fact that the majority of the population of the United States is now living in urban areas. This is a result of the process of urbanization, which has been going on since the beginning of the 20th century. The population of the United States has increased from about 100 million in 1900 to over 200 million in 1950, and the majority of this increase has been in urban areas. This has led to a concentration of population in a few large cities, which has in turn led to a number of problems, such as overcrowding, pollution, and traffic congestion.

which it is unnecessary to discuss or cite cases to support, that the judgment must be reversed and the cause remanded.

REVERSED AND REMANDED.

McSurely and Johnston, JJ., concur.



which is its characteristic to observe its life state is almost the  
the present state is changed and the same is changed.

REVISION AND CORRECTION

Revised and corrected, 11, 1900.

3911 a

SAM ROSENBERG,  
Appellee,

vs.

HERMAN ELENBOGEN,  
Appellant.

APPEAL FROM MUNICIPAL COURT

OF CHICAGO.

234 I.A. 646

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant from a judgment in the sum of \$479 entered in favor of the plaintiff upon the verdict of a jury, motions for a new trial and in arrest of judgment having been over-ruled.

This case was before us on a former appeal, as appears in 224 Ill. App. 664. The appeal there was from an order denying a motion of defendant to set aside an order previously entered granting plaintiff a non-suit. The appeal was dismissed for the reason that the order was held to be not an appealable one.

The statement of claim alleges that in the year 1917 defendant was engaged in the business of selling steamship and railroad tickets and foreign exchange in the City of Chicago, and that on January 10, 1917, plaintiff gave defendant the sum of \$514 in cash for the transportation of plaintiff's entire family from Europe; that it was agreed in the event plaintiff's family did not arrive at Chicago within a period of three or four months, plaintiff would get his money back from defendant; that plaintiff's family did not arrive within the time as agreed, and that plaintiff demanded the return of the money, which was refused.

Defendant in his affidavit of merits denied that he had received the money from the plaintiff under the terms alleged, and specifically denied that it had been agreed that in the event plaintiff's family did not arrive at Chicago within a certain time,



RECEIVED

CHICAGO

2341 A. 646

RECEIVED  
CHICAGO  
JAN 11 1917

STATE OF ILLINOIS  
IN SENATE

This is an appeal by the defendant from a judgment of the court of Cook County rendered in favor of the plaintiff upon the merits of a jury verdict for a sum of \$1000 and in favor of the plaintiff for costs and interest. The record shows that on the 11th day of January, 1917, the plaintiff, Mrs. J. M. Smith, filed in the court of Cook County a petition for the appointment of a receiver to take charge of the property of the defendant, J. M. Smith, and to collect the same. The petition was based upon the fact that the defendant had become insolvent and was unable to pay his debts. The petition was granted, and a receiver was appointed. The receiver filed a report showing that the defendant had assets of \$1000. The plaintiff then filed a motion for judgment upon the report of the receiver. The court rendered a judgment in favor of the plaintiff for the sum of \$1000 and costs. The defendant appeals from this judgment.

plaintiff would get his money back. On the contrary, defendant averred that the plaintiff on January 10, 1917, transmitted, through the instrumentality of defendant, by a wireless message for the said sum of \$514, the sum of 2500 marks to be paid to plaintiff's family through the Reice Bureau of Warsaw, and that it was understood and agreed that said Reice Bureau would arrange for the transportation of plaintiff's family; that these marks were duly transmitted by defendant to his correspondent in Berlin, Germany, and by said correspondent transmitted in turn to the Reice Bureau; that thereafter, by reason of the entry of the United States into the World War, the said Reice Bureau was unable to arrange for said transportation and returned said marks to the defendant's correspondent at Berlin; that the marks are still in control of said correspondent, and said defendant has been unable to secure the return thereof.

Evidence was introduced by the parties tending to sustain their respective contentions, the plaintiff testifying to certain conversations, which were denied by defendant, and many of the circumstances in evidence tending strongly to support the contention of the defendant. The evidence being thus, it is assigned and argued as error that the verdict in the case was produced by improper and prejudicial remarks of plaintiff's attorney in the argument to the jury. An examination of the record discloses that his zeal for his client outran his discretion in this respect.

Although the statement was wholly unsupported by the evidence, plaintiff's attorney told the jury that defendant had held himself out to the public as possessing "supernatural powers" which he would exercise in behalf of the afflicted people of Europe.

Counsel further repeatedly made unwarranted statements to the effect that the defendant was gambling in German marks, and a motion to strike out such statement was denied by



plaintiff would get his money back. In the contrary, defendant  
 averred that the plaintiff on January 10, 1917, transmitted,  
 through the instrumentality of defendant, by a wireless message the  
 sum of \$100,000, the sum of \$100,000 was to be paid to plaintiff's  
 family. Plaintiff testified that the sum of \$100,000 was paid to the  
 defendant and agreed that said \$100,000 would be sent to the  
 family of plaintiff's family; that these moneys were duly  
 transmitted by defendant to his correspondent in Berlin, Germany,  
 and by said correspondent transmitted in turn to the Berlin Bureau;  
 that thereafter, by reason of the entry of the United States into  
 the World War, the said Berlin Bureau was unable to attempt the  
 said transmission and returned said sum to the defendant's  
 correspondent at Berlin; that the moneys are still in custody of  
 said correspondent, and said defendant has been unable to receive  
 the same money.

Witness was impeached by the evidence tending to  
 establish that defendant transmitted, the plaintiff testifying to  
 certain direct negative conclusions, which were denied by defendant, and many of  
 the statements in evidence tending directly to support the con-  
 clusions of the defendant. The evidence being thus, it is concluded  
 that there is error that the verdict in the case was rendered by  
 improper and prejudicial remarks of plaintiff's attorney in the  
 argument to the jury. An examination of the record shows that  
 the plaintiff's attorney made his objection to this remark.  
 Although the statement was wholly unsupported by the  
 evidence, plaintiff's attorney told the jury that defendant had  
 said himself and to the public he was a "successful" person.

which is well known in fact of the plaintiff's family at  
 Chicago.

Consequently, further suggestion made was rejected.

the court. Plaintiff's counsel closed with an appeal in behalf of his client, referring to him as an "unhappy immigrant," which statement was withdrawn after the court had suggested that there was no evidence on that point. The argument of counsel to a jury should be in the line of giving assistance to the jury in its consideration of the case. The evidence here was close and conflicting, and plaintiff cannot complain if he is not permitted to retain the benefit of a judgment which was obtained by this sort of appeal.

For the error indicated the judgment is reversed and the cause remanded for another trial.

REVERSED AND REMANDED.

McSurely and Johnston, JJ., concur.



the court. The court's answer is that it is not in doubt  
of the fact, but that it is not in doubt, "which  
statement was admitted after the court had rejected that  
way of evidence on that point. The argument of counsel is a long  
struggle to the line of living evidence to the jury in the  
examination of the case. The evidence here was clear and con-  
clusive, and clearly cannot explain it as not permitted to  
verify the result of a judgment which was obtained by the court  
of record.

Let the jury decide the judgment in person and  
the court consider the matter after.

THE COURT'S ANSWER.

Delivered and returned, H. A. Justice.

3912a

MINNIE MEYER,  
Appellee,  
vs.  
OSCAR RUBIN,  
Appellant.

APPEAL FROM MUNICIPAL COURT  
OF CHICAGO.

234 I.A. 646

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant from a judgment in favor of the plaintiff and in the sum of \$872 entered upon the finding of the court.

The statement of claim alleged that theretofore there was pending before a Master in Chancery a certain case wherein the defendant here was one of the defendants; that his then solicitor, one Clark, who had full authority to represent the defendant, requested plaintiff to attend the hearing and furnish a transcript of the record, and that all of the services, an itemized statement of which was included in the statement of claim, were performed for defendant upon the request of his solicitor, who had full authority in the matter.

Attached to the statement of claim is the affidavit of Henry M. Hagan, who on oath states that he is the agent of the plaintiff "in the above entitled cause;" that he has knowledge of facts in said cause, and that said cause is a suit upon contract for the payment of money; that the nature of plaintiff's demand is as stated, and that there is due to plaintiff from the defendant after allowing to the defendant all his just credits, deductions and set-offs the sum of \$872.30.

The record does not show any motion to strike the claim. An affidavit of merits was filed, which was stricken, and in response



2000年12月

1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 26

9812

Page 14 of 14

THE UNIVERSITY OF CHICAGO

3341.462

of himself a most excellent and of course no other

100-443887-100

FROM ALL TO ALL

...the ... ..

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

... ..

... ..

The following are the names of the persons who have been named in the above report as having been present at the meeting held on the 10th day of June, 1908.

姓名: 性别: 年龄: 籍贯: 民族: 职业: 学历: 学位: 职称: 职务: 工作单位: 联系电话: 电子邮箱: 联系地址: 邮政编码: 100000

NOT RECORDED BY THE NATIONAL ARCHIVES AND IS NOT SUBJECT TO THE

...and the ... ..

— 18 —

The above information will be used by the Government and its agents.

... ..

10. The above information was obtained from the records of the [redacted] and is being furnished to you for your information.

100-443887-100

41. I cannot appreciate the fact that the author of the article has not been able to find a single example of a person who has been able to achieve a high level of success in business without the help of a partner.

\_\_\_\_\_

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

*Journal of Management Inquiry* 18(6)

to a rule upon the defendant to file an amended affidavit of merits he did so, admitting that Clark, who appeared as his solicitor in the suit mentioned, was duly employed by him, but denying that Clark had full authority to represent him in and about the matters sued on as alleged.

The amended affidavit of merits further set up that defendant had never received a statement of the claim sued on, and did not know the extent of the claim until served with summons; that the suit was brought by plaintiff without any attempt on her part to collect from defendant without suit; that the charges are exorbitant and unreasonable, not based upon the provisions of the statute in such case made and provided, and not made in accordance with any agreement ever had with the defendant or with any of his agents or representatives or with his said solicitors.

The affidavit further stated that, if upon proper adjustment of the claim in case, there should appear to be anything due, he was ready, willing and able to pay it.

Upon the hearing the plaintiff offered the evidence of qualified witnesses tending to show that the charges as made in the itemized statement were usual and customary charges for such services in Chicago at the time in question.

The solicitor, Clark, was called as a witness and testified that the defendant was one of the parties for whom he appeared, and that plaintiff furnished him a carbon copy of the transcript, which he used in representing the defendant. He testified further that he did not have any negotiations with the defendant concerning the testimony and that he did not consider himself personally responsible to the plaintiff; that in ordering the testimony he had acted for the defendant, Rubin. The witness said he did not know what plaintiff did with the original transcripts of the record and arguments and that he was acting for Rubin; that he supposed he had



to a wife upon the defendant is this an unusual situation of events  
in the law, involving great danger, and involving an unusual situation in  
the wife's conduct, was this explained by him, and was this case  
and this situation is explained in the defendant's conduct and an  
an answer.

[illegible]

It is the policy of the Department of the Interior to maintain the public lands in a state of readiness for the use of the people, and to provide for the proper management of the same. The Department is also responsible for the protection of the public lands from unauthorized use and for the enforcement of the laws relating to the same.

Upon the hearing the plaintiff offered the evidence of  
 certified witnesses tending to show that the charges are true in the  
 plaintiff's statement were true and uncontroverted charges for which recovery  
 is allowed as the law is applicable.

The defendant, James, was found to be a witness and was  
found that the defendant was not at the time of the  
and that defendant testified in a proper way at the hearing.  
which he was to be receiving his testimony. He testified further  
that he did not have any conversation with the defendant concerning  
the testimony and that he did not receive any information re-  
specting the hearing; that in entering the hearing he had  
heard the testimony, which the witness said he did not hear  
and that it was the defendant's testimony at the hearing.

many conversations with plaintiff; told her that he wanted a carbon copy of the testimony; did not ask her what the cost would be; that he never told plaintiff that he must see Rubin before hiring her.

Plaintiff testified in substance that she had been a court reporter for about twenty years; that she had a conversation with Clark at the beginning of the hearings before Master Mason with reference to the transcript, and asked him if he wanted a carbon copy of complainant's testimony and he said that he did; that he asked her how much it would be and she said it would be fifteen cents for each one of them; that at the close of plaintiff's testimony and before the defendant offered testimony, she had a conversation with Mr. Clark on Dearborn street on April 10, 1922, when she asked him if he wanted her to take the case, and that he asked her what she would charge and that she told him \$2 an hour and 50 cents a page; that he said, "Why, it isn't customary to charge attendance before masters, is it?" To which she replied, "Yes, we are all charging attendance now." She said her recollection was that he said he would see his client and let her know before the next hearing; that she did not hear from him and called him up and asked as to whether the date was set for the hearing and whether he wanted her to report for the hearing, and he said he did; that he had seen his client and that it was all right. She further testified that she attended before Master Mason and took the testimony and transcribed it, and furnished the Master with defendant's side of the case at Clark's request; that Clark was present and that she saw him using the transcript which she furnished.

Upon cross-examination she stated that she had sent a statement showing the balance due, as shown by the statement in this suit, to Clark, with the exception of an item of \$7; that she had sent to Clark several bills since then; that she had sent one by mail, which Mr. Rubin brought into her office





and told her Clark had given it to him.

One Kern, an attorney, testified that on the hearing before Master Mason he saw Clark there making use of the transcript of evidence taken by plaintiff; that he, Clark, had the transcript of record from time to time at the trial table and referred to it and used it in his cross-examination; that on several occasions Clark asked the Master for a continuance of the hearing, giving as his reason that plaintiff had not written up and had not furnished him with the transcript of the testimony.

The defendant offered no testimony and the court thereupon made the finding upon which judgment was entered.

The points argued by the defendant in this court question the sufficiency of this evidence to sustain the finding, and it is also urged that the statement of claim is insufficient. The controlling question in the case is, we think, raised by the allegation in the amended affidavit of merits, denying that the solicitor, Clark, had authority to contract for the services for which plaintiff sues. It is admitted that Clark was the solicitor for the defendant in the suit where the proceedings were had, and we think it is well established by the weight of authority that a solicitor so employed has implied authority to incur expenses of this kind. The general rule is well stated in Moulton v. Bowker, 115 Mass. 40, where it is said: "An attorney at law has authority, by virtue of his employment as such, to do in behalf of his client all acts, in or out of court, necessary or incidental to the prosecution and management of the suit, and which affect the remedy only, and not the cause of action." In 2 R.C.L., p. 988, in discussing the authorities of attorneys of record to incur incidental expenses, it is said:



and said that Clark had given it to him.

One item, an affidavit, testified that on the morning

before Master Jones he was Clark's driver and at the time-

view of evidence taken by plaintiff; that he, Clark, had the

possession of record from time to time at the hotel and

refused to let it go and is in his possession; that on

several occasions Clark asked the Master for a mortgage of

the property, giving as his reason that plaintiff had not written

up and had not furnished him with the necessary of the property.

The defendant offered no testimony and the court

thereupon made the finding upon which judgment was entered.

The points raised by the defendant in this case

question the sufficiency of this evidence to sustain the finding,

and it is also urged that the statement of Clark is inadmissible.

The controlling question in the case is, we think, raised by the

allegation in the amended affidavit of action, denying that the

plaintiff, Clark, had authority to mortgage the premises for

other claims. It is admitted that Clark was the plaintiff's

for the defendant in the suit where the proceedings were had, and

we think it is well established by the weight of authority that a

plaintiff so employed has limited authority to incur expenses of

this kind. The general rule is well stated in *Boyd v. Boyd*.

112 Cal. 44, where it is said: "An attorney at law has authority

by virtue of his employment as such, to do in behalf of his client

all acts in or out of court, necessary or incidental to the prosecution

and management of the suit, and which affect the remedy

only, and not the cause of action." 112 Cal. 44, p. 45, in the

question the authority of attorney of record to incur liabilities

expended, it is well

"Such reasonable expenses as the conduct of a case may require may be incurred by the attorney of record, and he may bind his client for any service which may be necessary and proper, not only for the preparation of the case for trial, but for the convenient conduct of such trial and the proceedings thereafter taken. If he assumes expenses or liability for his client he is entitled to be made whole by any regular means. Thus, he may employ a stenographer to take and transcribe evidence, and bind his client for the expense thereof, and he may bind his client for the fees of an expert witness and also for a reasonable cost of printing briefs."

As authority for this statement of law, Miller v. Palmer, 25 Ind. App. 357, and Tobler v. Nevitt, 45 Colo. 231, are cited. This last case is reported in 23 L. R.A.S.S. 702, and the authorities bearing on the subject are there collected in a note. It has been held in Bonyuge v. Field, 61 N. Y. 159, that in the absence of a special agreement for personal liability an attorney for one of the parties to an action could not be held personally responsible for the services of a stenographer, upon the theory that the client and not the attorney was in such case responsible. While the precise question here involved has not been passed upon in Illinois, Fairchild v. M.C.R.M. Co., 3 Ill. App. 501, and Gap. Hornstein Co. v. Grandall, 156 Ill. App. 520, are analogous cases, where a similar doctrine has been announced.

We do not think there is any question that Clark had implied authority to make the agreement with plaintiff for her services. It is also contended in defendant's behalf that there is no evidence in the record tending to show that the services were in fact performed by plaintiff for the defendant. However this may be, it was so alleged in the statement of claim, and the affidavit of merits does not deny the allegation. It is a fundamental rule of pleading that a material fact which is asserted by one side and not denied by the other must be taken to be admitted. See Sims v. Jenkins, 78 Ill., 479; McCormick v. Huss, 66 Ill. 315.

The defendant also argues that the affidavit of claim is insufficient and so imperfect that it cannot form the basis of a judgment. The affidavit was imperfectly abstracted. An examina-





tion of the same as it appears in the record indicates that this point is not well taken.

The judgment is affirmed.

AFFIRMED.

McSurely and Johnston, JJ., concur.



1897-1898. The following table shows the results of the work done during the year.

Table showing the results of the work done during the year.

The following table shows the results of the work done during the year.

Table showing the results of the work done during the year.

Table showing the results of the work done during the year.

CHARLES FOXIN,  
Appellee,

vs.

KOSHER STAR SAUSAGE MFG. COMPANY,  
a Corporation,  
Appellant.

3913a  
APPEAL FROM MUNICIPAL COURT  
OF CHICAGO.

234 I.A. 646

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THE OPINION OF THE COURT.

This appeal is by the defendant from a judgment for \$327.34 entered upon the verdict of a jury, motions for a new trial and in arrest of judgment having been over-ruled by the court.

The statement of claim alleged that on May 1, 1930, an oral agreement was made with the defendant, whereby the defendant hired the plaintiff as a salesman and agreed to pay for services to be rendered by plaintiff \$125 a week; that it was agreed that either party could terminate the employment by giving thirty days notice; that in February, 1931, defendant discharged plaintiff without giving such notice, and that there is therefore due plaintiff the sum of \$500 as salary for thirty days next following the date of his wrongful discharge.

The affidavit of merits denies the making of the contract as alleged, denies that there was an agreement whereby the employment could be terminated by giving thirty days notice; but states that plaintiff had been employed not as a salesman but in another capacity; that plaintiff had been paid for his services; that there was no agreement as to when the employment should be terminated; that the defendant was justified in discharging plaintiff because plaintiff had abused the confidence and trust imposed in him and had failed to satisfactorily perform the duties



1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

1941 - 42

of his employment; further, that on or about March 18, 1971, defendant gave and plaintiff received a check for \$88.90 in full of all claims and demands, and that plaintiff accepted the check in full of all demands, including the claim sued upon.

The parties offered evidence tending to sustain their respective contentions. The defendant here first argues that the judgment should be reversed because the proof does not correspond with the statement of claim. It says that the plaintiff testifies not to the agreement as set forth in his statement, but to an agreement whereby he was to work in the shipping room and buy briskets for defendant at a compensation of \$55 a week with a commission of one per cent and \$100 a month to cover expenses.

The conclusive answer to this contention is that defendant did not specifically object to the evidence on the ground that there was a variance, when it was offered. It is true that at the close of plaintiff's case defendant made a motion to dismiss and, among other grounds, stated that there was "a fatal variance according to plaintiff's own testimony;" but even if we could regard this as a motion for a directed verdict, it was not renewed at the close of all the evidence and was therefore waived. There is, therefore, no basis whatever in the record for this contention. Jacobs v. Marks, 183 Ill., 533; Probst Construction Co. of Chicago v. Foley, 166 Ill. 31; Pihl v. Springfield Consolidated R. R. Co., 219 Ill. App. 588.

The defendant also argues in effect that the verdict is against the weight of the evidence. We have examined it with care and do not think that this is true. The evidence was conflicting as to whether the agreement between the parties required thirty days notice prior to discharge, and on this point the plaintiff's testimony is uncorroborated and is also denied by two witnesses for the defendant. Their evidence, however, is in some respects



of his assignment; further, that on or about March 14, 1933, the  
Tombard gave and executed received a check for \$100.00 in full  
for all claims and demands, and that plaintiff assigned the same  
in full of all demands, including the claim sued upon.  
The parties stipulated evidence tending to establish clearly  
responsive answers. The defendant says that before this the  
Tombard should be reversed because the great facts and documents  
with the assignment of claim. It says that the plaintiff testified  
not to the agreement at the time in his statement, but in the  
agreement whereby it was in fact in the original form and that  
Tombard for defendant of a representation of the same with a new  
relation of one part, and with a new relation to other documents.  
The defendant answers in this connection is that the  
Tombard did not specifically object in the evidence in the ground  
that there was a variation, when it was offered, it is from that  
of the time of plaintiff's assignment with a new relation to the  
and, which other documents, which that there was a total variation  
connecting to plaintiff's own testimony, but that it was not  
made this as a matter of a corrected version, it was not wrong  
at the time of all the evidence and was correct as shown. There  
is, therefore, no legal objection in the record to the motion.  
Now, James v. James, 133 Ill. 2d 111; James v. James, 133 Ill.  
James v. James, 133 Ill. 2d 111; James v. James, 133 Ill. 2d 111.  
James v. James, 133 Ill. 2d 111; James v. James, 133 Ill. 2d 111.  
The defendant also wishes to offer that the motion  
as stated was made at the evidence. It was amended to this  
and so to not claim that this is true. The evidence was admitted  
and so as stated the agreement between the parties was revised in  
the motion given in paragraph, and on this point the plaintiff's  
testimony is uncontroverted and is also found by the jury.

evasive and contradictory. The defendant urges in extenuation of this that these witnesses were not proficient in the English language. In such cases we are the more reluctant to make a finding contrary to the verdict of the jury which has the approval of the trial judge, both judge and jury having seen and heard the witnesses.

It is also argued that the verdict of the jury was a compromise and inconsistent and should be set aside for that reason. We do not think this is necessarily so. Kernan v. Advance Terra Cotta Co., 311 Ill. App. 316, is against defendant's contention on this point.

It is also urged that the court erred in refusing at defendant's request to give certain written instructions which were asked after the jury had been orally instructed. This has been held not to be error in Morton v. Fussey, 237 Ill., 26, and other cases. Makas v. Aaron & Sons, 182 Ill. App., 100.

On the day plaintiff was discharged defendant gave him a check for \$60, and on the following day a check for the sum of \$88.90, which it is insisted covered all due plaintiff at that time. This check was marked, "Paid in full of all obligations." It is argued that this precludes plaintiff's recovery. However, as the damages for which plaintiff sues occurred after this time and only after plaintiff had unsuccessfully tried to get employment, it is evident that it was not the intention of the parties that the check was to be received in payment of the obligation on which this suit is based.

The judgment is affirmed.

AFFIRMED.

McSurely and Johnston, JJ., concur.





ARTHUR FREUND,  
Appellee,  
vs.

JACOB LASKIN, ELMER LASKIN,  
ARTHUR LASKIN and MYRON LASKIN,  
Doing Business as J. LASKIN &  
SONS,  
Appellants.

39142  
APPEAL FROM MUNICIPAL COURT  
OF CHICAGO.

234 I.A. 646

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THE OPINION OF THE COURT.

This appeal is by the defendants from a judgment in the sum of \$1780 entered upon the verdict of a jury after the usual motions for a new trial and in arrest had been over-ruled.

Statement of claim alleges that on July 17, 1921, defendants hired plaintiff as a manager and employee for a period beginning July 18, 1921, and ending January 1, 1922, and for a compensation of \$100 a week, together with a commission of ten per cent on the net profit of a store in Rochester, New York, during that period.

The statement alleges performance on the part of the plaintiff and his wrongful discharge after one week and three days of service, to his damage.

The affidavit of merits denies the making of the contract as alleged and denies the wrongful discharge without cause, and denies that the amount claimed is due.

It further avers that it had been agreed that plaintiff would take charge of and manage a certain store in Rochester, New York, beginning July 18, 1921; that plaintiff would immediately proceed for a period of thirty days to liquidate certain merchandise in the store at the best prices obtainable, thereafter purchase new merchandise and immediately inaugurate and personally instal a complete and efficient chain store merchandising system, including a



3114

THE UNITED STATES OF AMERICA

IN SENATE

3114

1914

REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE

1914

THE UNITED STATES OF AMERICA

IN SENATE

REPORT OF THE COMMISSIONER OF THE GENERAL LAND OFFICE

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

1914

record of daily inventories, report of daily sales, record of net costs, reports of operating, and other expenses, records and reports of net costs realized and other records, reports, forms and accounts usually and ordinarily included in such system; that plaintiff would furnish references as to his good moral character, integrity and business ability.

It further avers that said store and business was then owned by one Paul Horowitz; that defendants did not have any interest therein and never had any interest in said business; that defendants did not employ plaintiff to work in their behalf or at any time promise or agree to pay the plaintiff any such salary, compensation or bonus.

It is further averred that plaintiff proceeded to liquidate the inventory in an incompetent manner without regard to proper values, neglected to instal any efficient system of merchandising; that he was incompetent, unskilled and unqualified to discharge the duties of the position he undertook to assume, and that he failed to furnish references as agreed, and during the time he was present at the store he carried on flirtations.

Defendants further denied they were indebted to plaintiff in any sum whatever for compensation, salary, profits, bonus, or anything whatsoever.

The first contention of the defendants is that as the store was owned by Horowitz, defendants acted in his behalf in employing plaintiff, and they invoke the undoubted rule of law that there is no liability on the part of an agent in such case, where he acts for a disclosed principal. Defendants concede that the jury has found against them upon this issue of fact raised by the pleadings, but urge that the clear preponderance of the evidence on this point is in their favor. It is true, as defendants point out, that the oral testimony of the plaintiff is flatly contradicted by three





witnesses, no one of whom, however, can hardly be held to be disinterested. However, undisputed facts and circumstances in evidence, as well as written evidence, which cannot be disputed, tend strongly, in our opinion, to corroborate the testimony of the plaintiff on this point.

The evidence discloses that the store which the plaintiff was hired to manage in the city of Rochester, New York, dealt in ladies' ready-to-wear goods. Prior to the making of the contract plaintiff worked for Seigel & Company in Flint, Michigan. Defendants owned and conducted a business in Milwaukee, Wisconsin, and another in New York City, New York.

Horowitz was a nephew of Jacob Laskin and a cousin of Jacob's two sons, Elmer and Myron. The Rochester store had not proved to be a successful enterprise. The defendants had, however, been assisting the owner by the loan of money, etc., and about this time contemplated the organization of a corporation which should take over and conduct the store. As a matter of fact, the leases owned by Horowitz were about this time assigned to defendants. Defendants caused an advertisement to be inserted in a trade journal newspaper in New York for a manager for this store, to which plaintiff responded and negotiations were opened up which, according to his testimony, resulted in the employment of plaintiff by defendants for a time, under the conditions named in his statement of claim. The negotiations were conducted in New York by Elmer Laskin and Myron Laskin, and later were confirmed in writing. Defendants argue that the oral evidence was inadmissible to vary the terms of the written confirmation, but a careful examination of the record discloses that, upon the trial, no objection was made to the admission of this evidence, and that the defendants introduced similar evidence of oral conversations which was received without objection. We think this objection,





therefore, comes too late.

July 7, 1931, defendants wired plaintiff at Flint, Michigan: "Your application accepted. Arrange to leave for Rochester Saturday night July sixteenth Confirm this letter follows." On the same date defendants wrote plaintiff at the same address:

"We wired you this morning confirming your application for position to take charge of our store in Rochester, New York. Mr. Elmer R. Laskin will meet you in Rochester, at the Seneca Hotel on Sunday morning, July 17th. So you can arrange to leave Saturday night, July 16th, for Rochester, and meet at the hotel Sunday morning. All arrangements have been made at Rochester, so you can start right in on Monday morning. The writer will arrange for the installation of the store system at the same time and will arrange and plan necessary alterations and new fixtures. We have instructed our man in Rochester to do no more buying until your arrival. Confirming the arrangements between ourselves, it is understood that your salary is to be \$100.00 per week, plus 10% of the net profits, up to January 1, 1932. If everything is satisfactory between ourselves, the amount earned by virtue of your participation in 10% of the profits shall be applied towards your purchase of \$10,000.00 worth of stock in the corporation to be formed, of which you will immediately receive dividends and all other stockholders' rights -- all of the stock being common. We will, undoubtedly, have your confirmation to our wire today and shall await your answer to this letter. Expecting to see you in Rochester Sunday morning, July 17th, we are

Very truly yours."

This and other correspondence which is in evidence shows that the negotiations were carried on with plaintiff in the name of the defendants, and without any reference to or disclosure of the fact that Horowitz should be considered by plaintiff as his employer. The facts that the letter of July 7th refers to the Rochester store as "our store," that it refers to the instructions given "our man in Rochester," who is conceded to have been Horowitz, and that the arrangements are spoken of as "between ourselves," all strongly tend to corroborate the oral evidence of the plaintiff, which is flatly to the point that the hiring was not made by defendants in behalf of a disclosed principal. At any rate, in view of this evidence, we cannot, as a reviewing court, find justification in the record for overturning the finding of the jury.



1914 1000 1000 1000 1000

4. *Public Health Statistics*, 1978, p. 106.

1. The first of these is the fact that the United States has a large and growing population of people who are of Mexican descent. This population is concentrated in the southwestern United States, particularly in California, Arizona, and New Mexico. It is estimated that there are over 10 million people of Mexican descent in the United States, and this number is expected to increase significantly in the future.

1. *Journal of the American Medical Association*, 277, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674,

[illegible]
$$\text{var}(\hat{\beta}_1) = \frac{1}{n} \frac{1}{\sum_{i=1}^n (x_i - \bar{x})^2} \text{var}(e_i)$$
[illegible]

The next contention of the defendants is that the amount of the verdict indicates that the jury found there was an agreement to employ the plaintiff from July 18, 1931, up to January 1, 1932. Defendants contend that the evidence does not disclose that there was any such agreement, or, if there is evidence tending so to show, defendants argue that the verdict is against the manifest preponderance of the whole evidence. Here again the oral evidence of the plaintiff is contradicted by several witnesses, and we again turn to the written confirmation of the contract in order to determine what the intention of the parties was in this respect. The language of the written confirmation is, "It is understood that your salary is to be \$180 per week plus 10% of the net profits up to January 1, 1932." It may be conceded that, if the testimony as to the terms of the contract of employment had been confined to this written agreement, the meaning of this clause would be somewhat ambiguous.

The oral evidence of the plaintiff is, however, clear upon this point, and there are some circumstances appearing in the evidence which tend to corroborate him.

It appears that at the time of the making of this contract he was employed and had for quite a time been employed by another concern, and it does not seem reasonable to suppose that plaintiff would give up a steady job, evidently against the wish of his then employer, for an uncertain one which would be terminable at the will of his new employers, with whom he had apparently just become acquainted.

The defendants have cited cases which, upon the particular facts therein appearing, have held that where there is no agreement on the part of an employer to continue an employment for any length of time, the contract may be terminated at will. The cases cited are Phund v. Zimmerman, 29 Ill. 269, Orr v. Ward, 73 Ill. 318 (in which, however, the rule announced seems to be a



The next contention of the defendant is that the amount of the verdict indicates that the jury found there was an agreement to employ the plaintiff from July 1st, 1937, to at least a year, defendant's contentions that the evidence does not establish that there was any such agreement, or, if there is evidence pointing to the contrary, defendant argues that the verdict is against the weight of the evidence of the whole evidence. Once again the oral evidence of the plaintiff is contradicted by several elements, and he claims that to the written contract of the contract in part of the evidence that the plaintiff of the contract was in fact repudiated. The language of the written contract is, "It is understood that your salary is to be fixed per week plus 10% of the net profits of the business, 1937-1938." It may be assumed that, if the plaintiff as the owner of the business of defendant had been confined to this written agreement, the meaning of this clause would be assumed.

Witness.

The oral evidence of the plaintiff is, however, that from the point, and there are some circumstances appearing in the evidence which tend to corroborate this.

It appears that at the time of the making of this contract the plaintiff was employed and had been a time from employment by defendant company, and it was not until 1937-1938 that the plaintiff would give up a salary job, evidently making the fact of the oral evidence, but the defendant now claims would be inadmissible at the trial as his own employee, and when he had apparently been before the jury.

The defendant now claims that which which from the oral evidence tends to corroborate, and that there is no agreement on the part of the plaintiff to continue in defendant's business.

dictum, since it was not necessary to the decision), Joliet v. Brewing Co., 254 Ill., 219; Margum v. Domestic Engineering Co., 210 Ill. App. 337; Odell v. Chicago Great Western Railroad Co., 212 Ill. App. 618. We do not deem an extended review of these cases necessary, since all of them are easily distinguishable from the instant case upon the facts.

As we concluded upon the first contention so we conclude upon consideration of the second, that we cannot say that the finding of the jury is clearly and manifestly against the preponderance of the evidence.

The third contention of the defendants is that the plaintiff cannot recover because the evidence indicates that he first breached the contract in certain respects, and that he quit the service voluntarily. It is claimed that the plaintiff agreed to instal a system at the store in Rochester as soon as possible after he was hired, and that he failed to do so. It is sufficient to say on this point that we have examined the evidence, and, even if it is to be conceded that such was the agreement, we think the jury might properly find from the evidence that the plaintiff was discharged before a reasonable time elapsed in which any such system might have been installed.

Defendants further contend that the evidence indicates that the plaintiff quit voluntarily, and that he therefore cannot recover. We have examined the evidence on this point and do not hesitate to hold that the jury was entirely justified in finding against defendants in this respect. It is true, that plaintiff testified that Mr. Horowitz did not discharge him nor threaten to do so, but, upon plaintiff's theory of the case he was not employed by Mr. Horowitz, and was therefore not subject to discharge by him. He does testify to facts tending to show that he was discharged by Mr. Jacob Laskin against his protest and without cause, and Mr. Jacob Laskin was not called as a witness to deny this testimony,



very good the book.

As we mentioned in the first report, the first of these is the fact that the party is already an established organization in the country.

The jury returned a verdict in favor of the defendant, and the court granted a new trial.

[illegible]

nor does the record disclose any reason why he was not produced as a witness. The uncontradicted evidence shows that a check for \$100 was offered to the plaintiff at this time, with a request that he sign a statement to the effect that it was in full of all due him, which he declined to do.

The fourth contention of the defendants is somewhat inconsistent with the third, namely, that the plaintiff was discharged for cause. We do not deem it necessary to discuss the evidence bearing on this point at length. In fairness, however, it ought to be said that the charge of having flirted with the girl employees at the store in Rochester is not sustained by the evidence and that the contrary is indicated by the testimony of two of these employees, whose depositions were taken in defendants' behalf.

We are satisfied upon the whole record that substantial justice has been done in this case, and that the judgment of the trial court should be affirmed.

AFFIRMED.

McSurely and Johnston, JJ., concur.





3915a

HARRY SIMPSON,  
Appellee,

vs.

KANDEL BROTHERS, a  
Corporation,  
Appellant.

APPEAL FROM MUNICIPAL COURT  
OF CHICAGO.

234 I.A. 646

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant from a judgment entered upon the finding of the court. On the motion of plaintiff, appellee, the bill of exceptions has heretofore been stricken from the record and a motion to affirm the judgment was reserved to the hearing. An examination of the appellant's brief discloses that the only supposed errors argued are based on the bill of exceptions, which has been stricken.

It follows that the judgment of the trial court must be affirmed.

AFFIRMED.

McSurely and Johnston, JJ., concur.



2101

Page 1 of 1

THE UNITED STATES OF AMERICA

DO NOTOR

2101/1040

NOTARY PUBLIC

STATE OF NEW YORK

IN SENATE

January 10, 1900

REPORT OF THE COMMISSIONER OF THE LAND OFFICE

IN RESPONSE TO A RESOLUTION PASSED BY THE SENATE

January 10, 1900

ALBANY: J.B. LIPPINCOTT & CO., PRINTERS, 1900.

RECEIVED BY THE SENATE JANUARY 10, 1900.

ALBANY: J.B. LIPPINCOTT & CO., PRINTERS, 1900.

ALBANY: J.B. LIPPINCOTT & CO., PRINTERS, 1900.

ALBANY: J.B. LIPPINCOTT & CO., PRINTERS, 1900.

ALBANY: J.B. LIPPINCOTT & CO., PRINTERS, 1900.

ALBANY: J.B. LIPPINCOTT & CO., PRINTERS, 1900.

ALBANY: J.B. LIPPINCOTT & CO., PRINTERS, 1900.

ALBANY: J.B. LIPPINCOTT & CO., PRINTERS, 1900.

ALBANY: J.B. LIPPINCOTT & CO., PRINTERS, 1900.

3916a

J. C. BLAKESLEE and  
W. E. BOYINGTON, Copartners,  
Doing Business Under the Name  
and Style of B. & B. CONSTRUCTION  
CO.,

Appellees,

vs.

WILLIAM B. JUCUS,

Appellant.

APPEAL FROM SUPERIOR COURT  
OF COOK COUNTY.

234 I.A. 647

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THIS OPINION OF THE COURT.

This is an appeal by the defendant from a judgment in favor of the plaintiff in the sum of \$4782 entered upon the verdict of a jury after motions of defendant for a new trial and in arrest of judgment had been overruled.

The plaintiffs averred in their declaration that on September 8, 1921, they were engaged in the business of erecting and constructing buildings as general contractors; that they at that time made an agreement in writing with defendant whereby it was agreed that they would order material and supervise the labor for the construction of a building in Chicago, Illinois, according to certain specifications and at an approximate cost of \$59,000; that the work on the building was done on a basis of cost plus 10% payable upon completion of the job; that plaintiffs proceeded to perform their agreement and erect the building according to said plans and specifications furnished by the defendant; that thereafter plaintiffs entered into contracts with certain sub-contractors and took bids for work, labor and material to be furnished for the building, and accepted various bids, and that thereafter, on September 10, 1921, were willing and able to perform their agreement with the defendant, but the defendant not only refused to perform his part on and after that date but



1. The defendant was  
2. The defendant was  
3. The defendant was  
4. The defendant was  
5. The defendant was

Defendant

Plaintiff

Plaintiff

Defendant

Plaintiff

Defendant

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

Plaintiff

refused to comply with any of the terms of the agreement, by means whereof plaintiffs lost divers profits.

To this declaration the defendant filed a plea of the general issue, and by way of special defense alleged that his signature to the supposed contract was obtained by the false representation on the part of defendants that it was an agreement or authority to permit the plaintiffs to wreck the old house on the premises; that defendant is a Lithuanian, unable to read the English language, and that his signature was obtained upon the representation that the writing was for no other purpose than the wrecking of the building, and that a later contract would be made for the construction of the same.

The parties submitted evidence in support of their respective contentions, and the verdict of the jury was against the defendant on the facts. He here contends: First, that the court erred in permitting plaintiffs to testify as to work done, trips made, and bids which had been received from the different companies, some of the same being prior to the date of the execution of the contract sued on. He claims that in this respect the court transgressed the rule that negotiations preceding the signing of a written contract are merged in the agreement itself and are therefore inadmissible in a trial based upon the contract. This is undoubtedly the general rule, to which there are, however, many exceptions.

The only defense attempted to be interposed in this case was that the signature of the defendant to the writing had been obtained by misrepresentations, and in view of the issue presented by the pleadings we think this evidence was admissible.

The defendant next contends that the remarks of counsel in the closing argument were highly improper. We have examined the record in this respect, but it does not disclose that defendant made any objection thereto which is preserved in the





record. We will add, however, that after a careful reading of the argument and the evidence, we do not find anything in the argument which is not justified by the evidence in the case.

The defendant next contends that the amount of damages allowed indicates that the jury simply guessed and conjectured. The profits which would have accrued to plaintiffs had the contract been carried out were clearly and definitely determinable from the terms of the contract, and the amount allowed by the jury is less than that sum. This does not, however, give the defendant any reason to complain. If the plaintiffs were entitled to recover, their damages would be the exact amount which they would have made had defendant permitted them to perform. Lake Shore and Michigan Southern Ry. Co. v. Richards, 153 Ill. 89.

The defendant next complains of instruction No. 9, given for the plaintiffs, which, as modified by the court, was:

"The court instructs the jury that if you believe from the evidence that the defendant, William M. Jucus, by his acts and conduct, showed an intention not to be bound by said contract, if you believe from the evidence there was a contract, then said J. C. Blakeslee and W. M. Boyington had the right to treat said contract as abandoned by said defendant and to bring suit for the recovery of damages at any time thereafter, unless you believe, from the evidence, that the defendant company receded from such intention not to be bound, prior to the time when said plaintiffs chose to treat said contract as abandoned by the defendant. An intention can only be known by acts, conduct or declaration. Your inquiry in this connection is, first, did defendant, by act and conduct, violate the substantial provisions thereof; second, did such acts and conduct, if you believe from the evidence they existed, warrant the conclusion that they would be continued, and that it was the intention of the defendant to continue such acts and conduct."

The first objection made to this instruction is that, as the suit was on a special contract, it was necessary for the plaintiffs to prove that they were ready, willing and able to perform their part of the contract, and that this proof should be made regardless of what the acts of the defendant were. As a matter of fact, that proof was made in the case and was not contradicted in any way.





It is next urged that the words "defendant company" render the instruction meaningless. By referring to the record, however, it appears that in the original instruction the word "company" was cancelled.

It is further objected to the instruction that it disregards the defense of defendant that the contract was fraudulently obtained. This point was, however, fully covered by another instruction.

Defendant also complains of plaintiffs' instruction No. 10 as modified and given. A reference to the record also shows that this instruction is inaccurately printed in defendant's brief, while a reference to the case of Lake Shore and Michigan Southern Ry. Co. v. Richards, supra, indicates that a substantially similar instruction was approved by the Supreme Court in that case.

The defendant further complains that the court erred in refusing to give instruction No. 13 for the defendant as requested; but we think the instruction requested was in part not accurate and in other respects was covered by instructions given.

It is finally urged in behalf of the defendant that the verdict is contrary to the weight of the evidence. Without discussing the same in detail, it is sufficient to say that we have read the evidence of all the witnesses, as the same appears in the abstract, and are of the opinion that the jury was fully justified in finding a verdict for the plaintiffs.

For the reasons indicated the judgment of the trial court is affirmed.

AFFIRMED.

McSurely and Johnston, JJ., concur.





3917a

JENNIE LIND COLE,  
Appellee,

vs.

JOSEPH R. COLE,  
Appellant.

APPEAL FROM MUNICIPAL COURT

OF CHICAGO.

234 I.A. 647

MR. PRESIDING JUSTICE HATCHETT  
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant from a judgment in the sum of \$336 entered upon the verdict of a jury, as directed by the court. The statement of claim alleged that the plaintiff sued for the amount due under a decree of the Circuit court of Wisconsin for the County of Milwaukee, entered upon January 22, 1921. A copy of the decree was attached to the statement of claim and made a part of it.

The affidavit of merits stated by way of defence that on September 26, 1919, in the Circuit court of Milwaukee County a judgment of divorce was entered in favor of the plaintiff; that subsequent to the entry of the judgment the defendant transferred to the plaintiff the household furniture, personal property and certain real estate, in consideration of which plaintiff executed and delivered to defendant a satisfaction of the judgment; that subsequently, without the knowledge of the defendant, the plaintiff fraudulently and secretly, on January 17, 1921, appeared before one of the judges of the Circuit court of Milwaukee County, Wisconsin, and, without the serving of any notice verbal or written, contrary to the law and the statute, petitioned the court for a revision of the judgment originally entered and, notwithstanding the full payment and satisfaction of the judgment and the release and discharge thereof, fraudulently and wrongfully, without the judge of the court being advised in the matter, obtained an order





revising the judgment and directing the defendant to pay to her the sum of seven dollars each and every week after January 7, 1921; that the defendant was wholly unaware that the plaintiff had made any application to the court for a revision of the judgment until the time that he was served with a summons in this suit; that the Circuit court of Milwaukee <sup>County</sup> was without jurisdiction of the defendant at the time of the entry of the order; that for these reasons defendant was not indebted to plaintiff.

Upon the trial of the cause the plaintiff offered in evidence a copy of the order of the Circuit court of Milwaukee County entered on January 22, 1921, to which objection was made by the defendant that it was not in proper form, that a proper foundation had not been laid for it, and that it was not an exemplified copy of the judgment or of the decree, and further, on the ground that there was a variance between the evidence offered and the statement of claim. This objection was over-ruled by the court and the plaintiff rested her case.

The plaintiff was then called as a witness by the defendant, and defendant offered to show by her that about March 5, 1920, a satisfaction of judgment had been entered in the Circuit court of Milwaukee County and that the satisfaction of judgment was acknowledged as full payment and satisfaction of the judgment in the Circuit court of that County, and released and discharged the defendant from any and all liability growing out of the judgment, and that she had received therefor certain properties, money and real estate. An objection was made and the objection sustained, as was also an objection to a question as to whether the witness knew that no notice was served on the defendant at the time she secured an order revising the judgment.

On cross-examination, however, the witness testified that defendant was in fact served with a notice of the hearing in Milwaukee in Marshall Field's store in Chicago on January 11, 1921.



reviewed the defendant and reviewed the defendant in part in 1901  
the sum of seven dollars each and every year after January 1,  
1902; that the defendant was wholly unaware that the plaintiff  
had made any application to the court for a revision of the judgment  
and until the time that he was served with a summons in this  
case, that the defendant was at no time aware of the filing of the  
application at the time of the filing of the judgment and the  
defendant's testimony was not intended as hearsay.  
Upon the trial of the cause the plaintiff offered in  
evidence a copy of the order of the Circuit Court of Baltimore  
County entered on January 22, 1901, to which objection was made  
by the defendant that it was not in proper form, that a return  
thereon had not been laid out, and that it was not an  
authenticated copy of the judgment or of the decree, and that  
he the witness that there was a variance between the evidence of  
fact and the statement of law. This objection was overruled  
by the court and the plaintiff rested her case.  
The plaintiff was then called as a witness by the de-  
fendant, and defendant offered in proof by her two witnesses, John E.  
Wynn, a satisfaction of judgment had been entered in the Circuit  
Court of Baltimore County and that the satisfaction of judgment  
was acknowledged as full payment and satisfaction of the judgment  
in the Circuit Court of that County, and returned and distributed  
the balance from any and all liability created out of the same.  
Wynn, and that she had received thereon certain payments,  
money and cash notes. An objection was made and the objection  
sustained, as was also an objection as to whether the  
affidavit that no notice was served on the defendant at the time  
the account was filed regarding the judgment.  
In cross-examination, however, the witness testified

The witness further testified that she was present in court when the order was entered, but that Mr. Cole was not present. The parties rested and the counsel for defendant then renewed a motion made at the close of plaintiff's evidence that the jury be directed to find the issues for the defendant, which was overruled and the court thereupon instructed the jury to return the verdict upon which the judgment in this case was entered.

The defendant here argues that the supposed record introduced and received in evidence was wholly insufficient to support the verdict.

An examination of the Wisconsin record <sup>offered</sup> discloses that it contains only a copy of the judgment order which was entered in the case. In Vail v. Iglehart, 69 Ill., 334, our Supreme Court said: "Under our practice, while the pleadings, process, etc., are not, as at common law, required to be copied on a parchment roll, nor in record books in which final judgment is entered, they are required to be filed in the office of the clerk; and when a copy of the record of a judgment is required, for the purpose of bringing the case by appeal or writ of error into this court, or bringing suit upon it in another State, or as evidence under an issue of nul tiel record, or to establish a former adjudication of the same subject matter between the same parties, and, indeed, in all cases where it is essential to have a complete record of a judgment, the pleadings and process are an indispensable part of it. And the general rule is, that where the copy of a record of a judgment is required, it must be of the whole record, so that the court may determine the legal effect of the whole of it, which may be quite different from that of a part."

As is said in Ruling Case Law, vol. 15, p. 571:

"An order for a judgment is not a judgment, nor does the entry of such order partake of the nature and qualities of a judgment."

See also Frick-Reid Supply Company v. Consolidated Adjustment



The witness further testified that she was present in every room  
the witness was entered, but that Mr. Cole was not present. The  
witness testified that the witness for defendant then testified - was  
that she was at the time of plaintiff's evidence that the jury is  
directed to find the issue for the defendant, which was every-  
thing and the court then on instructed the jury to return the  
verdict upon which the judgment in this case was entered.  
The defendant here argues that the witness's testimony  
interested and revealed in evidence was wholly immaterial to  
subject the verdict.

Deferro

The examination of the Wisconsin record shows that  
it contains only a copy of the judgment order which was entered  
in the case. In *Walt v. Walcott*, 50 Ill., 184, and *Walt v. Walcott*,  
100 Ill., 184, the court held that the judgment, as entered, was  
the law, as it contains the judgment as it appears in a judgment  
book, and the record books in which the judgment is entered.  
They are not to be filed in the office of the clerk, and when  
a copy of the record of a judgment is required, for the purpose of  
defining the same by means of writ of error into this court, or  
relating with it in another State, or in relation to other  
cases of the same court, or in relation to a party's obligations  
of the same nature under the same parties, and, indeed,  
in all cases where it is essential to have a complete record of a  
judgment, the findings and process are an indispensable part of  
it. And the general rule is, that where the copy of a record of a  
judgment is required, it must be of the whole record, so that the  
court may determine the legal effect of the whole of it, when  
any one or more different parts of a party's  
it is held in *Walt v. Walcott*, 50 Ill., 184, and  
"an entry of a judgment is not a judgment, nor does the entry"

Co., 197 Ill. App., 303; Pine v. Central Life Ins. Co., 207 Ill. App. 596; Lincoln v. Cross, 11 Wis., 94.

If the defendant in his affidavit of merits had denied the existence of the Wisconsin judgment, in other words, if he had filed a plea of nul tiel record or its equivalent, we would be compelled to hold the evidence insufficient. On the contrary, however, the affidavit admits the existence of the judgment but alleges that it was fraudulently obtained. It was, of course, unnecessary for the plaintiff to prove allegations admitted by the pleadings, and the defense alleged, namely, fraud in the obtaining of the judgment, was disproved by the evidence.

The record does not bear out the statement of the defendant that the trial court excluded evidence tending to show that the Wisconsin court was without jurisdiction. Indeed, on cross-examination of the plaintiff she testified to facts tending to show the jurisdiction of the Wisconsin court and defendant did not produce evidence to the contrary, although he indicated that he would and was given ample opportunity to do so. See Rox v. Blake, 146 Ill., 76. The judgment is affirmed.

AFFIRMED.

McSurely and Johnston, JJ., concur.



[illegible][illegible]

11. The witness is a native of the State of New York, and is now residing in the City of New York.

1944-1945

3918a

THE STATE BANK OF NEW YORK,  
a Corporation,

Appellee,

vs.

S. B. SLATER,

Appellant.

APPEAL FROM MUNICIPAL COURT

OF CHICAGO.

234 I.A. 647

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant from a judgment entered by default, an amended affidavit of merits filed by the defendant having been stricken by the court. Plaintiff's statement of claim alleged that money was due and owing it upon certain promissory notes (copies of which were attached to the statement of claim) executed by the defendant, S. B. Slater, at the times and for the amounts respectively named in said notes. It was further alleged that the notes were assigned and delivered to the plaintiff by the payee and that plaintiff took the notes without notice of any defenses which the defendant might have against payment thereof, and that there was due to plaintiff as holder in due course the amounts of the notes with protest fees.

The statement of claim further alleged that notice of the assignment of these notes was given to the defendant upon certain dates therein specified.

Attached to the statement of claim was the affidavit of one Green, stating that he was the authorized agent for plaintiff, and that the suit was for recovery of money only; that the nature of plaintiff's demand "is as stated above," and that there was due to plaintiff from defendant after allowing all just credits, deductions and set-offs, the sum of \$2010.12.

In the amended affidavit of merits the defendant under



THE STATE OF NEW YORK,  
County of ...

IN SENATE,  
January 1, 1907.

REPORT OF THE

COMMISSIONER OF THE LAND OFFICE

REPORT OF THE COMMISSIONER OF THE LAND OFFICE  
FOR THE YEAR 1906

This is an appeal by the defendant from a judgment entered by default, as amended, in favor of the plaintiff, in a case brought by the plaintiff against the defendant, in the County of ...

It is alleged that the defendant has failed to pay the amount of the judgment, and that the plaintiff is entitled to recover the same, with interest, from the date of the judgment, until paid.

The plaintiff claims that the defendant has failed to pay the amount of the judgment, and that the plaintiff is entitled to recover the same, with interest, from the date of the judgment, until paid.

Alleged to be the plaintiff's claim, and that the defendant has failed to pay the same, and that the plaintiff is entitled to recover the same, with interest, from the date of the judgment, until paid.

oath stated that he verily believed that he had a good defense upon the merits to the whole of plaintiff's demand, denied that the notes or any of them had been assigned and delivered by the payee of the notes to the plaintiff as alleged, or that the plaintiff was the legal owner of the notes or any of them; further alleged that the notes and each of them were executed and delivered by the defendant to the payees for their accommodation only; that the payees of the notes paid no consideration or anything of value to the defendant at the time of the execution and delivery thereof; that if the payees delivered said notes to the plaintiff they were delivered for accommodation only; that the plaintiff paid no money or consideration and parted with nothing of value at the time of the delivery of the said notes by the payees; that the payees were not at the time of the alleged delivery and assignment of the notes, nor were any of them, indebted to the plaintiff in any sum; and that the payees were not from that time to the time of the commencement of the action, and were not at that time, indebted to the plaintiff in any sum or sums of money. The affidavit denied that certain of the notes were assigned and delivered to the plaintiff as alleged, and denied that the plaintiff took the notes without notice of any defenses which defendant might have against the payment thereof, and denied that there was due to the plaintiff any sum of money whatsoever.

The statement further denied that notice of the assignment and delivery of the notes from the payees to the plaintiff was given to the defendant, as alleged, and further set up that on and prior to the 24th day of February, 1932, a petition in bankruptcy was filed against the payees of the respective notes alleged to have been executed by the defendant and set out in plaintiff's statement of claim in the United States District Court for the District of New York in the City of New York, and that at



with which it was really delivered when it had a good delivery upon  
the basis of the work of Plaintiff's business, which was  
made on day of them and been assigned and delivered by the paper  
of the notes to the Plaintiff as alleged, or that the Plaintiff  
was the legal owner of the notes on day of them; further alleged  
that the notes and each of them were executed and delivered by the  
defendant to the payee for good consideration only; that the pay-  
ee of the notes paid no consideration or anything of value in the  
defendant at the time of the execution and delivery thereof; and  
if the papers delivered said notes to the Plaintiff they were delivered  
to the Plaintiff only; that the Plaintiff paid no money or some  
consideration and acted with nothing of value at the time of the de-  
livery of the said notes by the payee; that the papers were not  
at the time of the alleged delivery and assignment of the notes, and  
were not at them, indebted to the Plaintiff in any sum; and that  
the papers were not then that time to the time of the assignment of  
the notes, and were not at that time, indebted to the Plaintiff in  
any sum or sum of money. The Plaintiff wanted that certain of the  
notes were assigned and delivered to the Plaintiff as alleged, and  
desired that the Plaintiff seek the notes without notice of any  
defenses which defendant might have against the payee; that  
and desired that issue was to the Plaintiff only and of money  
thereafter.

The defendant further denied that notice of the as-  
signment and delivery of the notes from the payee to the Plaintiff  
was given as the defendant, as alleged, and further set up  
that on and after the 15th day of February, 1888, a petition in  
bankruptcy was filed against the payee of the respective notes  
alleges to have been executed by the defendant and not at in

the time of the filing of said petitions said respective notes were in the possession of the payees who were thereafter duly adjudicated bankrupt, and said respective notes and other property of the said bankrupt became the property of and belonged to the estate of the said bankrupt payees; further that the plaintiff had knowledge and knew of the insolvency and bankruptcy of said payees at the time of the alleged assignment and delivery of possession of the notes, and that said payee bankrupts attempted to assign and transfer the possession of said notes to plaintiff when they were insolvent and after the petition in bankruptcy had been filed, all of which facts were well known to the plaintiff; that the plaintiff acquired possession of the notes from the said payees unlawfully and at a time when the same belonged to the estate of the bankrupts; that these bankrupts at the time of the alleged assignment of the notes had no title to said notes and were without power to transfer or assign the same to plaintiff; and that said attempted assignment was void and of no effect and that said notes were still the property of and belonged to the estate of the said bankrupts and did not belong to the plaintiff.

The affidavit of merits further alleged that at the time of the filing of the petition of bankruptcy and at the time of the transfer of the notes to the plaintiff the bankrupts were and now are indebted to the plaintiff upon their certain promissory notes, duly executed and delivered by said bankrupts to defendant for merchandise purchased by them from the defendants in a sum amounting to \$1969.43; that none of said notes was ever paid by the said bankrupts or their estate, and that the same were still due and unpaid, which sum the defendant claimed as a set-off to the amount claimed to be due upon said notes.

In plaintiff's statement of claim it is further alleged that plaintiff was indebted to the defendant in the sum of \$10 on account of a judgment for costs rendered against it in the



the time of the filing of said petition said responsive notes were in the possession of the person who now has them and who delivered them to the plaintiff, and said responsive notes and other property of the said defendant became the property of and belonged to the plaintiff at the time said defendant executed the same. Further that the plaintiff had knowledge at the time of the execution and delivery of said notes of the time of the alleged assignment and delivery of possession of the notes, and that said notes were assigned to said plaintiff and transfer of possession of said notes to plaintiff when they were issued and after the petition in bankruptcy had been filed, all of which facts were well known to the plaintiff; that the plaintiff executed a receipt of the notes from the said person individually and as a class when the same belonged to the estate of the defendant; that the defendant at the time of the alleged assignment of the notes had no title to said notes and was without power to transfer or assign the same to plaintiff; and that said assignment and transfer was void and of no effect and that said notes were still the property of and belonged to the estate of the said defendant and all the same to the plaintiff.

The affidavit of Maria Turner states that at the time of the filing of the petition of bankruptcy and at the time of the transfer of the notes to the plaintiff the same were and now are related to the plaintiff upon their certain promissory notes, duly executed and delivered by said defendant to defendant. The same were purchased by them from the defendant in a sum amounting to \$100.00; that none of said notes were ever paid by the said defendant or their estate, and that the same were still due and unpaid, which sum the defendant claimed as a debt to the plaintiff and claimed to be due from said notes.

In plaintiff's statement of claim it is further stated

former suit based upon the same notes.

It is urged by the plaintiff in behalf of this judgment that the brief and argument for defendant does not comply with Rule 19 of this court. The brief of defendant is subject to the criticism that it is not printed separate and apart from the argument. However, no motion was made to strike it. The record is short, and the entire statement, brief and argument contain less than seven pages. We are not disposed to deny substantial justice on a mere technicality of this sort.

Plaintiff next urges in behalf of the judgment that the errors assigned do not appear to be relied upon by defendant for reversal, and are therefore necessarily waived. The assignment of errors are: First, that "The court erred in striking defendant's amended affidavit of merits from the files;" second, "that the court erred in entering judgment for the plaintiff for want of a sufficient affidavit of merits;" third, "that the court erred in entering judgment for the plaintiff for \$3010.12 for want of a sufficient affidavit of merits; and fourth, "that the court erred in entering judgment against the defendant." The argument presented is pertinent to each and all of these errors assigned. The criticism is not just.

The plaintiff's third point is that the bill of exceptions does not contain copies of the pleadings, rules and documents necessary for determination of the errors relied upon by defendant for reversal. It suggests in particular that the bill of exceptions does not contain a copy of defendant's amended affidavit of merits with regard to which defendant argues alleged error.

Plaintiff says that this court has repeatedly decided that the ruling of the Municipal court of Chicago striking an affidavit of merits from the files cannot be reviewed unless the pleading is preserved in the bill of exceptions, as such a pleading is



It may also be noted that the same rules.

It is urged by the plaintiff in behalf of this judge.

And that the brief and arguments for defendant have been made with this in mind. The brief of defendant is subject to the criticism that it is not printed separately and away from the argument. However, no motion was made to strike it. The record is short, and the entire statement, brief and argument contain less than seven pages. It was not deemed to be very voluminous. Justice on a mere technicality of this sort.

Plaintiff next urges in behalf of the defendant that the errors assigned to not appear to be relied upon by defendant. For reversal, and are therefore necessarily waived. The assignment of errors are: First, that "the court erred in striking the defendant's amended affidavit of merits from the record;" second, "that the court erred in entering judgment for the plaintiff for want of a sufficient affidavit of merits;" third, "that the court erred in entering judgment for the plaintiff for want of a sufficient affidavit of merits; and fourth, "that the court erred in entering judgment against the defendant." The argument presented is pertinent to each and all of these errors assigned. The criticism is not just.

The plaintiff's third point is that the bill of exceptions does not contain copies of the affidavits, which and which would be necessary for determination of the errors relied upon by defendant for reversal. It suggests in parenthesis that the bill of exceptions does not contain a copy of defendant's amended affidavit of merits with regard to which defendant wishes to assign error. Plaintiff says that this court has repeatedly held that the record of the Municipal Court of Chicago contains an affidavit of merits.

no longer a part of the common law record, citing Harris v. Willie, 209 Ill. App. 401.

Plaintiff fails, however, to note the controlling fact that it here appears from the bill of exceptions that the affidavit of merits was stricken upon plaintiff's motion and "for insufficiency in law." In such case it is not necessary that the affidavit of merits should be preserved by a bill of exceptions for reasons set forth in the recent case of H. & E. Holding Co., Inc., v. W.A. Davis & Co., 229 Ill. App. 409. In such case the proceedings are treated as in the nature of a demurrer and the pleadings are a part of the record. The plaintiff does not argue that this affidavit of merits failed to set up a good defense to the action set forth in the statement of claim, and could not, in our opinion, successfully so argue.

It follows that the assignment of errors must be sustained, the judgment reversed and the cause remanded for another trial.

REVERSED AND REMANDED.

McSurely and Johnston, JJ., concur.



the subject of a bill of the House of Representatives, which passed on April 11, 1901.

Plaintiff claims, however, to have the same bill as the bill of the House of Representatives, and that the bill of the House of Representatives is not the same as the bill of the House of Representatives.

It is true that the bill of the House of Representatives is not the same as the bill of the House of Representatives, but it is not the same as the bill of the House of Representatives. The bill of the House of Representatives is not the same as the bill of the House of Representatives, and the bill of the House of Representatives is not the same as the bill of the House of Representatives.

It is true that the bill of the House of Representatives is not the same as the bill of the House of Representatives, but it is not the same as the bill of the House of Representatives. The bill of the House of Representatives is not the same as the bill of the House of Representatives, and the bill of the House of Representatives is not the same as the bill of the House of Representatives.

Respectfully,  
J. M. [Name],  
[Address]

JOHN DUCKENFIELD,  
Appellee,

vs.

THE GENERAL MOTOR UNDERWRITERS,  
Appellant.

3979a  
APPEAL FROM MUNICIPAL COURT  
OF CHICAGO.

234 I.A. 647

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THE OPINION OF THE COURT.

This appeal is by the defendant from a judgment in the sum of \$322.24 entered upon the finding of the court.

The suit of plaintiff was based on an insurance policy executed and delivered by the defendant to the plaintiff in and whereby plaintiff's automobile was insured against loss on account of theft. The statement of claim alleged the execution and delivery of the policy and that the automobile was stolen and damaged. The affidavit of merits denied that the automobile was either stolen or damaged as alleged, and denied all liability under the contract.

The defendant in this court does not deny that the evidence tended to show that the car was stolen and damaged, but argues that the measure of damages was the reasonable cost of having the repairs made, and that there was no competent evidence offered by which the reasonableness of the cost of the repairs made could be determined.

The plaintiff upon the trial, as to a part of the expenses of making the repairs, introduced the receipted bills for the respective amounts paid, and as to others introduced evidence tending to show that the charges made were fair and customary charges for the work that was done. The total payments testified to by the plaintiff amounted to \$306.90.

The defendant in this court cites Berry on the Law of Automobiles (2nd ed.) sec. 389, Galveston-Houston E. Ry. Co. v.



3841.A.047

IN REPLY TO THE REPORT OF THE

COMMISSIONER OF THE BUREAU OF

This report is by the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

Commission of the Bureau of the Commission of the

English, 178 S. W. 666, and E. S. Conrad Co. v. St. Paul City Ry. Co., 153 N. W. 256, to the effect that a receipted bill for repairs in such cases is not competent evidence of damages unless connected up by other evidence. It may be conceded that this is the law, but in the instant case other evidence was offered tending to show that the receipted bills offered represented actual amounts which had been paid to repair the damage to the automobile, and also further evidence tending to show that the agent of the defendant company directed plaintiff to have these repairs made. There was, therefore, evidence from which the court might properly find that the payment for the repairs was made in the course of ordinary business, and there being no evidence in the record tending to show that the same was not paid in good faith, we think the inference might very properly be drawn from the evidence that the amounts paid represented the reasonable cost of repairs.

This court has so held in the recent case of Pack v. Ellerbrook, gen. no. 28790, not yet reported. We there quoted the Appellate Court of this District in Travis v. Pearson, 43 Ill. App. 579, as follows:

"In ordinary business transactions, nothing appearing to cast suspicion on the fairness thereof, good faith is presumed and the evidence of what one has actually paid for necessary repairs is admissible to show what the reasonable cost of such repairs is. Atchison v. Steamboat, 14 Mo., 63-69, Hildreth v. Fitts, 53 Vt., 634-690. See also Feabody v. Lynch, 184 Ill. App. 78."

The plaintiff has not appeared in this court in support of the judgment.

The evidence before us indicates that the amount actually paid for the repairs was only \$306.90, while judgment was entered for \$322.24.

Upon a remittitur by plaintiff within ten days of \$15.34 the judgment will be affirmed; otherwise it will be reversed and the cause remanded.

AFFIRMED UPON REMITTITUR.

McSurely and Johnston, JJ., concur.





342 Pa

CALIFORNIA PRUNE & APRICOT  
GROWERS, Inc., a Corporation,  
Appellee,

vs.

GROSSFELD & ROE CO., a  
Corporation,  
Appellant.

APPEAL FROM MUNICIPAL COURT  
OF CHICAGO.

234 I.A. 647

MR. PRESIDING JUSTICE MATCHETT  
DELIVERED THE OPINION OF THE COURT.

This appeal is by the defendant from a judgment in the sum of \$4733.94 entered upon the verdict of a jury, motions for a new trial and in arrest of judgment and a motion for judgment non obstante veredicto having been over-ruled.

The plaintiff's statement of claim alleged the execution and delivery of several contracts whereby the plaintiff sold and the defendant bought certain quantities of prunes. It alleged the failure and refusal of defendant to accept and pay for the prunes to the damage of plaintiff by reason of a falling market.

The contracts in question were set up in the statement of claim in haec verba, and the terms and provisions of these contracts were similar except as to the quantities sold. One of the contracts, being No. 12801, dated May 18, 1930, was the subject of an agreement made by the parties at a later date, namely, on the sixth day of December, 1930. This supplemental agreement recited that, if the car of prunes in question was shipped at that time in the usual manner, the financing of the same would cause the buyer serious inconvenience and that, at the buyer's request, it had been agreed that, as the seller was then carrying certain stocks of "Sunsweet" prunes in Chicago warehouse on consignment, the buyer would take from said Chicago stock as rapidly as his salesmen could move the goods, meeting the prices of buyer's com-



Robert • 1998

RECEIVED  
JAN 10 1964  
U.S. DEPARTMENT OF AGRICULTURE  
WASHINGTON, D.C.

1917

**THE UNIVERSITY OF CHICAGO**

RECEIVED MAY 14 1964

[illegible]

THE FOLLOWING IS A SUMMARY OF THE RESULTS OF THE INVESTIGATION:

[illegible]

petitors, a tonnage equal grade for grade to the tonnage covered by said contract, paying to the seller's broker as withdrawals were made at full contract prices, which were to be the seller's opening prices on Sunsweet prunes for the 1930 crop, plus freight, storage, insurance, and any other charges accrued or which might accrue.

This supplemental agreement further provided: "Seller and Buyer both agree that fulfillment of this agreement shall be considered fulfillment of the original contract, but that until all the provisions of this agreement have been complied with, the original contract shall be in full force for any undelivered and unpaid for portions thereof, and that nothing in this agreement shall be construed as releasing either party thereto from any rights or obligations under the original contract."

The original contracts, including said No. 12801, were in material provisions as follows: "San Jose, California, May 18, 1930. Grossfeld & Roe Co., of Chicago, Ill., hereinafter called 'Buyer' has this day bought from the California Prune and Apricot Growers, Inc., a corporation, of San Jose, hereinafter called 'Seller,' has this day sold the following quantities of California Dried Fruits as per varieties, style of package, and prices named below, and in accordance with the terms and conditions set forth on this contract. \* \* \*

#### 1930 Crop

One Carload Prunes Sunsweet Brand Assortment as follows-----  
Firm at Seller's opening prices, said prices guaranteed against Seller's own decline, until January 1, 1931. \* \* \* \*"

The affidavit of merits as to all these contracts with the exception of No. 12801, set up as a defense that the same were null and void for want of mutuality and uncertainty, in that no definite price for the prunes was therein fixed; that by the terms of the contract it was optional with the seller to fix the price



...a ... ..  
... ..  
... ..  
... ..  
... ..  
... ..

... ..  
... ..  
... ..  
... ..  
... ..  
... ..  
... ..

... ..  
... ..  
... ..  
... ..  
... ..  
... ..  
... ..

THE ...

... ..  
... ..  
... ..  
... ..  
... ..  
... ..

and to deliver pro tanto and not in toto the amount of prunes named. This is the principal point argued in behalf of appellant. The contention is, we think, without merit.

The contracts specifically state that the seller sells and the buyer buys, and the promise to do the one thing would seem to be a good consideration for the promise to do the other.

As to the matter of prices, while it may be conceded that, in the original contracts these were indefinite and uncertain, the same were afterwards made certain by a letter from plaintiff to defendant, which was assented to by the defendant and acted upon by both the parties. Having accepted this construction of these contracts, defendant is now precluded from asserting otherwise when sued thereon. Indeed, the situation seems to be exactly covered by Section 9 of the Uniform Sales Act, Smith Hurd Illinois Revised Statutes 1923, p. 1855, which provides: "The price may be fixed by the contract or may be left to be fixed in such manner as may be agreed or it may be determined by the course of dealing between the parties." The defendant says that the provision of the contracts with reference to prices did not give the buyer the slightest information either as to what it would be charged for the prunes or when the prices would be announced. This is not a fair statement of the provision of the contract.

The evidence shows that the course of dealing between the parties was such that, at the opening of the season, it would be necessary for the seller to state what its opening prices were, and these prices would necessarily be determined by the supply of the prunes and the market demand for the same. The seller was by the terms of this contract obligated to make the same price to the defendant as it made to its other customers. As to the suggestion that the seller was only obligated by the contract to deliver pro tanto, it appears that the percentage which the seller was required



and to deliver my paper and not in vain the amount of payment  
made. This is the principal point upon which I insist.  
The committee is, as usual, without power.

The committee occasionally state that the paper will  
not be given, and the answer is to the one which will come  
to be a great assistance for the purpose to be the other.

as to the matter of expense, while it may be considered  
that, in the principal instance, some other party has been  
paid, the same was afterwards paid by a letter from the  
first of the committee, which was answered by the one which was sent

again by both the parties. Having accepted this explanation, it was  
impossible, although it was explained that the committee had  
been chosen. Indeed, the committee were to be chosen, and by

Section 7 of the Bill of Rights, which says that the  
people shall have the right to peaceably assemble, and to petition  
the government for redress of grievances. The right may be given by

the committee, and the right to be given in such manner as may be  
desired, it is not to be understood by the power of dealing between the  
parties. The committee says that the provision of the committee

with reference to the right to be given the power to be given in  
manner either as to what it would be desired for the purpose of doing  
the right would be understood. This is not a fair statement of the  
provision of the committee.

The committee says that the power of dealing between  
the parties was such that, in the working of the committee, it would be  
necessary for the committee to state what the committee wished to do, and

those parties would accordingly be directed to the committee of the  
committee and the committee would be directed to the committee of the  
committee of the committee of the committee of the committee of the committee

of the committee of the committee of the committee of the committee of the committee

by the terms of the contract to deliver might be decreased in case of damage to the crop. Such a provision, agreed to by the parties in favor of the seller, does not destroy the mutuality of the contract. See Texas Seed Co. v. Chicago Nat Co., 187 South Western, 747.

Defendant contends its liability under contract 12801 upon a different ground. Conceding that the supplemental agreement removed the objection of want of mutuality, defendant's contention as to this contract is that there was no breach or repudiation by reason of the supplemental agreement. It says that it was only bound by the terms of this agreement to take the Sunwest prunes provided for in that contract from the Chicago warehouse "as rapidly as his (its) salesman can move the goods, meeting the prices of buyer's competitors \*\*\* paying \*\*\* as withdrawals are made, at full contract prices \*\*\*\*." However the supplemental agreement of December 6, 1920, expressly provided that neither party should be released from any rights or obligations under the original contract, and in effect provided new terms as to the delivery of the prunes.

It is true that no definite and specific time was named within which the delivery should be made, but the law would imply a reasonable time in view of all the circumstances, and the question of what was a reasonable time was a question for the jury. The verdict of the jury has settled that point against the defendant.

Moreover, there was evidence in the record tending to show (and the verdict of the jury indicates) that the jury found as a fact that on January 13, 1921, defendant notified plaintiff of its inability to take the prunes mentioned in contract 12801, as well as those sold under the terms of the other contracts. It was therefore unnecessary to prove the failure of the defendant to take the goods within a reasonable time.



by the terms of the contract to deliver within the specified time  
 and of image to the group. Such a provision, however, is not  
 possible in favor of the seller, since not having the possibility  
 at the moment. See *Interstate Nat. Bk. v. Board of Governors*, 247  
 U.S. 177, 181.

Therefore, under the liability under contract  
 there is a different result. Looking at the contract  
 agreement, however, the obligation of good faith, honesty,  
 and the fact that in this contract it was stated to be made by  
 the parties by reason of the contractual agreement. It says  
 that in the only clause by the terms of this agreement to have  
 the contract terms provided for in this contract from the time  
 the contract was made (the) contract was made the  
 goods, meaning the value of buyer's obligation to pay for  
 the goods and the value of the contract price. However,  
 the contractual agreement of December 4, 1935, contains the  
 clause that neither party shall be released from any obligation  
 obligations under the contract contract, and in effect providing  
 the time to the delivery of the goods.

It is true that no definite and certain time was  
 stated when the delivery should be made, but the law  
 would imply a reasonable time in view of all the circumstances,  
 and the question of what was a reasonable time was a question  
 for the jury. The verdict of the jury was that the time  
 against the defendant.

However, there was evidence in the record showing  
 that the time of the delivery of the goods was not  
 stated in the contract. The contract was made  
 at the time of the delivery of the goods and the time of the  
 delivery of the goods was not stated in the contract.

Defendant contends that the evidence as to the impossibility of defendant taking more of the prunes refers only to contract 12801, but this, we think, is mere quibbling in view of all the circumstances which appear in evidence.

Defendant further contends that, after its refusal to take the prunes, plaintiff stored the same for defendant's account, and argues that this in law amounted to a transfer of the title of the goods to the defendant, subject to a vendor's lien, and that the suit of plaintiff should therefore have been brought for the purchase price of the prunes, and that in order to maintain such an action it was necessary for the plaintiff to notify the defendant that the goods were being held by plaintiff as bailee for defendant.

Under the provisions of the Uniform Sales Act (see section 63, Smith Burd Illinois Revised Statutes 1923, p. 1362) the vendor of goods (in cases where the fourth clause of section 64 is not applicable) may offer to deliver the goods to the buyer and, if the buyer refuses to receive them, may notify him that the goods are thereafter held by the seller as bailee for the buyer, and in such cases may maintain an action for the price. Whether in the instant case the seller might have proceeded under this provision of section 63, it is unnecessary to inquire, since the pleadings indicate and the proofs tend to show that plaintiff in fact proceeded to bring his action under section 64, which provides that where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may maintain an action against him for damages for non-acceptance. We do not hesitate to hold that the jury could not do otherwise under the evidence than find an anticipatory breach of all the contracts by defendant on January 15, 1901.

The drafts of defendant for goods already delivered had been dishonored; an involuntary petition in bankruptcy had been filed against it; a conference of its creditors had been called in order to consider the situation, and defendant at that time admitted its fi-



The first of the two is the question of the
 propriety of the action. The second is the
 question of the propriety of the action.
 The first of the two is the question of the
 propriety of the action. The second is the
 question of the propriety of the action.

financial inability to meet the requirements of the contract, which inability was in part at least shown to be due to the falling market for these goods.

Section 65 of the Uniform Sales Act provides: "Where the goods have not been delivered to the buyer, and the buyer has repudiated the contract to sell or sale, or has manifested his inability to perform his obligations thereunder, or has committed a material breach thereof, the seller may totally rescind the contract or the sale by giving notice of his election so to do to the buyer." Defendant argues that plaintiff did not comply with this statute, and therefore cannot maintain its action. Plaintiff was not bound to proceed under section 65, although, we think, it may well be doubted whether even in that case it would have been necessary to give the notice. Heller v. Continental Mills, 233 N. Y. 641; Metes v. Curtiss Aeroplane Co., 232 N. Y. 372; Henderson Tire & Rubber Co., v. F. E. Wilson & Sons, 233 N. Y. 489.

Defendant contends that the evidence received by the court tending to show the market price of the prunes in question at the time of the breach of the contract was incompetent. By the terms of the contracts the plaintiff had obligated itself not to offer any of this brand of prunes prior to January 1st at a price lower than the opening price, and a trade journal known as the "California Fruit News," published and controlled by the plaintiff, shows that it kept this promise strictly according to the terms of the contract. The evidence, however, abundantly shows that the market price of the prunes had fallen and that this was one of the reasons for defendant's financial embarrassment. The evidence submitted by the plaintiff tending to show the difference between the contract and market price was largely submitted by means of deposition. The form of questions put to the witnesses was in some instances quite objectionable, but only a general objection was made, and we think the court very properly ruled upon the hearing that



THESE THINGS BEING  
RECORDED IN THE  
RECORDS OF THE  
CITY OF NEW YORK  
IN THE YEAR 1900

The first of these is the fact that the
 defendant has been indicted in the State of
 New York for the same offense as the
 defendant in the case of the State of
 New York. The second is the fact that
 the defendant has been indicted in the
 State of New York for the same offense
 as the defendant in the case of the
 State of New York. The third is the
 fact that the defendant has been
 indicted in the State of New York for
 the same offense as the defendant in
 the case of the State of New York.

the general objection was not good.

Defendant further contends that the court erred in instructing the jury that if it found the issues for the plaintiff it might, in case it found the delay of the defendant in taking and paying for the goods was unreasonable and vexatious, allow interest at the rate of 5% from the date of the breach. Defendant contends that the damages in this case were unliquidated and that this instruction was therefore erroneous.

The contrary has been decided in many similar cases. See Briggs v. Ball, 94 Ill., 323; Elch v. Campbell, 139 Ill., 191; Murray v. Bond & Co., 157 Ill., 388; Harvey v. Hamilton, 155 Ill., 377; McMahon v. N. Y. & N. H. R. Co., 20 N. Y. 463.

We have considered other points made in defendant's behalf, but upon the whole evidence we are satisfied that there was a refusal to take the goods called for by the contract for the only reason that the market price therefor had fallen and that the defendant desired to avoid the loss which was bound to occur in case it lived up to the terms of the contract.

We are satisfied that substantial justice has been done, and the judgment is therefore affirmed.

AFFIRMED.

McSurely and Johnston, JJ., concur.



The General objection was not good.

Defendant further contends that the court would be prejudiced by the fact that it is known the answer for the plaintiff is wrong, in view of the fact of the defendant is wrong and that the court was prejudiced by the fact that the plaintiff is wrong. Defendant further contends that the court would be prejudiced by the fact that it is known the answer for the plaintiff is wrong, in view of the fact of the defendant is wrong and that the court was prejudiced by the fact that the plaintiff is wrong.

The court has been advised in many other cases, that the court is not bound by the fact that the plaintiff is wrong, in view of the fact of the defendant is wrong and that the court was prejudiced by the fact that the plaintiff is wrong.

We have considered the facts and the law and we are satisfied that the court is not bound by the fact that the plaintiff is wrong, in view of the fact of the defendant is wrong and that the court was prejudiced by the fact that the plaintiff is wrong.

We are satisfied that the court is not bound by the fact that the plaintiff is wrong, in view of the fact of the defendant is wrong and that the court was prejudiced by the fact that the plaintiff is wrong.

Witness my hand and seal this 1st day of January, 1901.

Attest: My hand and seal this 1st day of January, 1901.

JEROME TRADING CO., a Corporation,  
Plaintiff in Error,

vs.

THE RIEGEL SACK CO., a Corporation,  
Defendant in Error.

3921a  
ERROR TO MUNICIPAL COURT

OF CHICAGO.

234 I.A. 648

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is a writ of error prosecuted by the plaintiff, the Jerome Trading Company, to review a judgment of the Municipal court of the City of Chicago in an action brought by the plaintiff against the Riegel Sack Company, the defendant, for damages for an alleged breach of contract. The case was tried before a jury.

The parties entered into the following written contract:

"Chicago, Ill., July 9th, 1921.

The Jerome Trading Company, Chicago, Ill., agrees to buy and accept and The Riegel Sack Company, New York, agrees to sell and deliver the following:

|          |   |
|----------|---|
| Quantity | One Hundred Thousand (100,000)  |
| Material | Bew misprinted 7 oz. Genaburg Cement Bags with valves and hem tops, 30x36.                      |
| Price    | \$57.00 per Thousand.   |
| Shipment | To be shipped after July 20th.  |
| F. O. B. | Chicago, Illinois.  |
| Terms    | Sight Draft, Bill of Lading attached.   |
| Remarks  | Ship this car to our order, via the Wabash or Erie R. R. 14th St. Teamtrack, Chicago, Illinois. |

JEROME TRADING COMPANY,

By Jacob J. Cohen, Treas.

Accepted by Riegel Sack Co.,

W. A. Turner.

Date 7/11/21."

The plaintiff alleges that the defendant did not ship the bags and that in consequence the plaintiff was damaged in the sum of \$3215.00. The defendant admits that no bags were delivered, and urges as its principal defense that after the execution of the contract, in conversations between representatives of the companies, the defendant learned that the plaintiff intended to use the bags for an unlawful purpose, and wanted the defendant to join with the



1990-1991  
1991-1992

© 1998 by John Wiley & Sons, Inc.

[illegible]

12345678910111213141516171819202122232425262728293031323334353637383940414243444546474849505152535455565758596061626364656667686970717273747576777879808182838485868788899091929394959697989910010110210310410510610710810911011111211311411511611711811912012112212312412512612712812913013113213313413513613713813914014114214314414514614714814915015115215315415515615715815916016116216316416516616716816917017117217317417517617717817918018118218318418518618718818919019119219319419519619719819920020120220320420520620720820921021121221321421521621721821922022122222322422522622722822923023123223323423523623723823924024124224324424524624724824925025125225325425525625725825926026126226326426526626726826927027127227327427527627727827928028128228328428528628728828929029129229329429529629729829930030130230330430530630730830931031131231331431531631731831932032132232332432532632732832933033133233333433533633733833934034134234334434534634734834935035135235335435535635735835936036136236336436536636736836937037137237337437537637737837938038138238338438538638738838939039139239339439539639739839940040140240340440540640740840941041141241341441541641741841942042142242342442542642742842943043143243343443543643743843944044144244344444544644744844945045145245345445545645745845946046146246346446546646746846947047147247347447547647747847948048148248348448548648748848949049149249349449549649749849950050150250350450550650750850951051151251351451551651751851952052152252352452552652752852953053153253353453553653753853954054154254354454554654754854955055155255355455555655755855956056156256356456556656756856957057157257357457557657757857958058158258358458558658758858959059159259359459559659759859960060160260360460560660760860961061161261361461561661761861962062162262362462562662762862963063163263363463563663763863964064164264364464564664764864965065165265365465565665765865966066166266366466566666766866967067167267367467567667767867968068168268368468568668768868969069169269369469569669769869970070170270370470570670770870971071171271371471571671771871972072172272372472572672772872973073173273373473573673773873974074174274374474574674774874975075175275375475575675775875976076176276376476576676776876977077177277377477577677777877978078178278378478578678778878979079179279379479579679779879980080180280380480580680780880981081181281381481581681781881982082182282382482582682782882983083183283383483583683783883984084184284384484584684784884985085185285385485585685785885986086186286386486586686786886987087187287387487587687787887988088188288388488588688788888989089189289389489589689789889990090190290390490590690790890991091191291391491591691791891992092192292392492592692792892993093193293393493593693793893994094194294394494594694794894995095195295395495595695795895996096196296396496596696796896997097197297397497597697797897998098198298398498598698798898999099199299399499599699799899910001001100210031004100510061007100810091010101110121013101410151016101710181019102010211022102310241025102610271028102910301031103210331034103510361037103810391040104110421043104410451046104710481049105010511052105310541055105610571058105910601061106210631064106510661067106810691070107110721073107410751076107710781079108010811082108310841085108610871088108910901091109210931094109510961097109810991100110111021103110411051106110711081109111011111112111311141115111611171118111911201121112211231124112511261127112811291130113111321133113411351136113711381139114011411142114311441145114611471148114911501151115211531154115511561157115811591160116111621163116411651166116711681169117011711172117311741175117611771178117911801181118211831184118511861187118811891190119111921193119411951196119711981199120012011202120312041205120612071208120912101211121212131214121512161217121812191220122112221223122412251226122712281229123012311232123312341235123612371238123912401241124212431244124512461247124812491250125112521253125412551256125712581259126012611262126312641265126612671268126912701271127212731274127512761277127812791280128112821283128412851286128712881289129012911292129312941295129612971298129913001

THE JOURNAL OF THE  
THE JOURNAL OF THE  
THE JOURNAL OF THE

|  |                  |
|--|------------------|
| 1. The first of these is the fact that the majority of the population of the United States is now living in urban areas. | Urban population |
| 2. The second is the fact that the majority of the population of the United States is now living in the South and West.  | South and West   |
| 3. The third is the fact that the majority of the population of the United States is now living in the South and West.   | South and West   |
| 4. The fourth is the fact that the majority of the population of the United States is now living in the South and West.  | South and West   |
| 5. The fifth is the fact that the majority of the population of the United States is now living in the South and West.   | South and West   |
| 6. The sixth is the fact that the majority of the population of the United States is now living in the South and West.   | South and West   |
| 7. The seventh is the fact that the majority of the population of the United States is now living in the South and West. | South and West   |
| 8. The eighth is the fact that the majority of the population of the United States is now living in the South and West.  | South and West   |
| 9. The ninth is the fact that the majority of the population of the United States is now living in the South and West.   | South and West   |
| 10. The tenth is the fact that the majority of the population of the United States is now living in the South and West.  | South and West   |

Approved by Special Agent  
J. A. [illegible]  
Date [illegible]

THE UNIVERSITY OF CHICAGO PRESS

plaintiff to carry out the unlawful purpose; that the defendant refused, and rescinded the contract. There are other defenses relied on by the defendant, but we do not deem it necessary to consider them. In the view we take of the case, if the weight of the evidence sustains the defense which we have stated, the defendant was justified, as a matter of law, in refusing to carry out the contract.

The general rule in regard to illegal contracts is that they are not contracts according to the definition of a contract. 13 Corpus Juris, section 339, p. 410. "The illegality may be found in the matter of the consideration or of the promise as expressed in the agreement, or it may be found in the purpose to which the agreement, although legal in expression, is applied. In either case the agreement is void." 13 Corpus Juris, section 339, p. 410. "An agreement to perpetrate a fraud on a third person is illegal and void." 13 Corpus Juris, section 344, p. 413.

In the case of Sullivan v. Wolf, 192 Ill. App. 365, it was held that in an action on a note, an alleged set-off of a certain sum of money promised the payee for making a temporary deposit in the bank of the plaintiff for the purpose of "showing a substantial increase in its business" in order to effect a sale or consolidation with another bank, will not be considered, since such a contract was immoral and made for the purpose of deceiving and defrauding a third person.

In the case of Foley Mfg. Co. v. Sierra Nevada Lumber Co., 170 Fed. 197, which is similar to the case at bar, the action was in assumpsit by the plaintiff, a corporation, in the contracting business, against the defendant to recover damages by reason of the alleged failure of the defendant to perform its contract to furnish the plaintiff certain lumber under the plaintiff's contract with the United States Government for the construction of a government building. The substance of one of the pleas of the defendant was that after the defendant entered into a contract to furnish





lumber to the plaintiff it discovered that the lumber was not the kind required by the specifications, but a materially inferior kind which the plaintiff intended fraudulently to substitute. In reversing the judgment of the lower court and holding that the defense was a valid one, the United States Court of Appeals said (p. 201): "The proof that was submitted, taken in connection with the circumstances, tended directly to show that a fraud upon the government was contemplated, and that plaintiff in error withdrew from its performance of its contract with defendant in error to avoid becoming a party to such fraud. And the facts, which such proof tended to establish, in our judgment of the law justified plaintiff in error in declining to execute the contract."

Counsel for the plaintiff maintains that "the mere knowledge that a buyer intends an unlawful use of goods sold does not avoid the contract of sale;" and in support of his contention cites, among other cases, the case of Reefeld v. Ozella, 290 Ill., 147. The rule stated by counsel, and the case of Reefeld v. Ozella, supra, relied on in support of the rule, do not apply to the case at bar. The question presented by the plea of the defendant in the case at bar is not whether the defendant merely had knowledge of the alleged unlawful purpose of the plaintiff, but whether the plaintiff attempted to induce the defendant to join the plaintiff in perpetrating a fraud on a third party, and whether the plaintiff refused to accept the bage unless the defendant joined with the plaintiff in perpetrating the fraud. In the case of Reefeld v. Ozella, supra, the court expressly stated (pp. 152, 153) that the lease under consideration in that case "was not shown to have been entered into with the intention of using the premises for an unlawful purpose." If the defendant in the case at bar had joined with the plaintiff in the alleged fraudulent scheme, the defendant would have been acting in concert with the plaintiff with an actual intent to commit a fraud.





We are clearly of the opinion that if the preponderance of the evidence sustains the plea of the defendant, the plaintiff cannot recover.

The evidence is conflicting.

W. A. Turner, in behalf of the defendant, testified that he was the branch manager of the Chicago office of the defendant, the Rigal Sack Company; that the defendant manufactures and sells cotton bags for different concerns, including the Universal Portland Cement Company; that in manufacturing the bags the brand on the bags is sometimes misprinted; that these defective bags are thrown aside until the season is over; that then they are sold after the original brand is cancelled. The testimony of Turner shows that after the execution of the contract he had several conversations with Jacob J. Cohen, treasurer of the Jerome Trading Company. The substance of these conversations is as follows: Cohen asked Turner what brands were on the bags. Turner said he could not give the information because there were various brands. Cohen asked Turner if there were any Universal Portland Cement Company bags. Turner stated that he guessed there were about 25,000. Cohen said, "I would like to have those bags shipped to me just as they are, without being cancelled out." Turner said, "We can't do that." Cohen replied, "Otherwise I can't use the bags." Turner said, "If you can't use the bags the incident is closed." Cohen said, "I see no reason why you can't ship them with the original brands on them." Turner replied, "That is a rather strange request. If you are going to dispose of the bags in a legitimate manner, it won't harm them in any way to cancel the printing. It doesn't harm the cloth. It doesn't detract from the contents of the bags cubic contents; the bags are just as large, the cloth is just as strong. We can't sell somebody else's brand. We can't ship the bags with the original brand on them." Cohen said, "I can't use them." Turner said, "If we comply with your request, we would be a party to fraud. We wouldn't consider





that for a moment." Cohen replied, "I know it would be dishonest, but it doesn't pay to be honest." Turner asked Cohen in what way he could dispose of the bags if they were shipped with the original brands. Cohen replied, "I know someone connected with the Universal Portland Cement Company that would work with me and we could slip these bags in through a side door process and collect twenty-five cents apiece for them." Turner said, "We absolutely refuse to be a party to a deal of that sort and the incident is closed;" that in the presence of T. M. Gallie, the treasurer of the Riegel Back Company, Cohen asked him, Turner, if he would consider shipping the bags with the original brands on them; that he, Turner, and Gallie said no; that Gallie asked Cohen what was the object of shipping the bags with the original brands, and that Cohen said, "You have a chance to print up these bags with the twenty-five cent mark on them and ship them to a man like who knows how to dispose of them, as I know how to do it; and I can slip them in through a back door process to the Cement company and collect twenty-five cents apiece for them and slip you some money on the side;" that Gallie said, "We refuse to be a party to that."

Turner testified <sup>further</sup> that Cohen told him that if he would ship the bags with the original brands on them, he, Cohen, would give him \$2000. Turner said, "I think you are a damn crook; you have admitted it. You can go to hell, and I am through with you."

T. M. Gallie, the treasurer of the Riegel Back Company, was present at one of the conversations between Cohen and Turner. Gallie's testimony is substantially the same as Turner's, with the additional statement that in answer to Gallie's question how Cohen could carry out the plan without the people seeing that the bags had not been used for cement, Cohen said that all you have to do is to put the bags through cement and nobody would know the difference.

Jacob J. Cohen, the treasurer of the Jerome Trading



that for a moment, "I know it would be impossible,"  
but it doesn't say so in court." Turner asked John in what way  
he could explain it and says it may have happened with the witness  
before. John replied, "I know someone connected with the delivery  
of the money because they were with me and we could also  
have been in through a side door process and without twenty-five  
cents given for them." Turner said, "We absolutely refused to be a  
party to a deal of this sort and the incident is closed." Then in  
the presence of J. M. Bellie, the president of the Michigan Bank  
Association, John asked him, Turner, if he would consider returning the  
money with the original funds on hand; that is, Turner, and Bellie  
said yes; that would be all right and the object of obtaining  
the bank with the original funds, and John asked, "Do you have a  
check in your hand with the twenty-five cents and on hand  
and will you be a man like who knows how to dip out of your, as I  
know you are not; but I can give you in return a bank check  
presented in the bank company and without investigation would return  
the check and give you more money on the check; that would be all."

Further

Turner testified that John told him that if he would  
give the bank with the original funds on hand, he, Turner, would  
give him \$1000. Turner said, "I think you are a man worth your  
money and I am not to fail, and I am through with you."  
J. M. Bellie, the president of the Michigan Bank Association,  
and, the president of one of the associations between John and  
Turner, Bellie's testimony is corroborated by the man on Turner's  
side the additional statement that in answer to Bellie's question  
that John would return the money without the twenty-five cents  
the bank had not been used for money, John said that all the money

Company, testified that he had conversations with Turner after the execution of the contract. Cohen testified in substance that Turner said he was informed by his New York office that their law department would not allow the Riegel Back Company to ship bags without being cancelled; that Turner said that the Universal Portland Cement Company bags had a registered mark on them and that there were sixty-five or seventy thousand bags of the Universal Portland Cement Company and the remainder were bags of the "Atlas, Lehighs or Eastern brands;" that he, Cohen, said, "If you will find out what your New York plant will charge for stencilling these bags for the customers I have sold to, we can turn this bag inside out and stencil them;" that he, Cohen, never got the price on that; that he, Cohen, told Turner that the bags could be marked with a red X on both sides; that Turner said, "No, we can't do that. We will have to blacken the bags from top to bottom;" that he, Cohen, said, "I can't use the bags blackened up. I bought new misprint bags;" that Turner said he would let him know; that Turner told him over the 'phone later, several weeks after the first conversation, "to go to hell;" that in another conversation with Turner, Cohen said, "I want these bags and I want you to ship them out;" that Turner said, "We will have to blacken them;" that he, Cohen, said, "I will tell you what you do; you ship all these bags, the Universal, Lehighs, Atlas, whatever brands they may be, to the Universal Portland Cement Company and that will save you the job of blackening up the bags or making any X marks on the bags or anything like that;" that Turner said he would let him know; that Turner said, "I could use bags made out of remnants with double seams on them;" that he, Cohen, said, "I couldn't use them; I want the bags I bought and nothing else;" that in August the market price of bags went up; that he, Turner, did not say that the bags would be "obliterated and the writing cancelled;" that he, Cohen, did not tell Turner that he, Cohen, could put the bags through a back door process by some one





who was favorable out there who would accept for the company; that he, Cohen, did not offer Turner \$2000 if he, Turner, would get the bags for him, Cohen, uncanceled; that he, Cohen, did not say it did not pay to be honest; that he, Cohen, was after Turner all the time to ship the bags; that in the first part of September Turner finally said that he would not ship the bags; that he, Cohen, did not tell Turner in the presence of Gallie that he wanted the brand left off of the bags so that he could get the bags in the hands of the mills without any marking of any kind. Cohen denied having <sup>the</sup> made/other statements attributed to him when Gallie was present.

Earl V. Aldrich, an employee of the Universal Portland Cement Company, testified on behalf of the plaintiff that only a customer of the Universal Portland Cement Company who has actually used bags of the company is allowed the price charged by the company for the bag if the bag is returned in good condition; that Cohen could not get 25 cents a bag in the regular course of business; that the only possible way it could be done would be by counterfeiting the 25 cent mark on the bag; that the Jerome Trading Company is not engaged in the business of buying cement and dealing in cement with the Universal Portland Cement Company. The plaintiff introduced the two following letters in evidence, which the plaintiff wrote to the defendant:

"We have waited with patience for you to deliver the one hundred thousand misprint bags as per our contract of July 9th, 1921. These bags were supposed to be shipped July 30th or after. As you have failed to do so, we have already given instructions to our customers to whom we have sold these new misprint bags to go out in the open market, buy up these bags and charge our account with same and in turn, we will charge your account with whatever difference there should be plus our profits on same."

"Enclosed find invoice for our profit for non-delivery of one hundred thousand misprint sacks purchased from you which you refuse to deliver, either because you did not have this material on hand or on the lame excuse of being branded with some mill's name, which you refuse to ship. This is a poor excuse for non-delivery. Also wish to call your attention that if we do not receive check within ten days after you



that the Government is not in a position to make any statement at this time.

[illegible][illegible]

1. The first part of the report is a general statement of the purpose of the study. This is followed by a brief review of the literature on the subject. The third part of the report is a description of the methods used in the study. This is followed by a presentation of the results of the study. The final part of the report is a discussion of the results and their implications.

receive this invoice, we will place this in the hands of our attorneys. This invoice calls for our profit and as soon as we receive invoice from our customers we will charge same to you."

The plaintiff also introduced in evidence a letter from the defendant to the plaintiff which was in reply to plaintiff's letters. The letter of the defendant is a history of the transaction, and is substantially a summary of defendant's testimony.

The rule is a familiar one "that where there is a contrariety of evidence and the testimony by fair and reasonable intendment will authorize the verdict, even though it may be against the apparent weight of the evidence, a reviewing court will not set it aside." Garney v. Shady, 295 Ill., 78, 83.

From a consideration of the evidence we are of the opinion that there is sufficient evidence to sustain the plea of the defendant, and that the verdict of the jury is not manifestly against the weight of the evidence.

Counsel for the plaintiff maintains that the verdict of the jury is the result of passion and prejudice. The specific grounds of his contention are that defendant's counsel on the trial asked improper and prejudicial questions of witnesses for the plaintiff, and made improper remarks in his argument to the jury. One of the questions complained of is as follows: "How much business is there in it for you to come here as a witness?" We think that it is obvious that the question is not sufficiently prejudicial to require a reversal of the judgment. The other question complained of was not objected to on the trial. The remarks to the jury which it is contended were prejudicial were not objected to.

Counsel for the plaintiff farther contends that the trial court erred in instructing the jury. We have examined counsel's objections to the instructions and we do not think that





any of the instructions objected to are sufficiently prejudicial to justify a remandment of the cause for a new trial.

For the reasons stated the judgment is affirmed.

AFFIRMED.

Hatchett, P. J., and McSurely, J., concur.



For the reasons stated, the Commission is satisfied that the information furnished by the respondent is reliable and that the respondent is a person of good character and high standing in the community.

Journal of the American Statistical Association

3922

VJERESLOW CELIC,  
Appellee,

vs.

NEW YORK CENTRAL RAILROAD COMPANY,  
Appellant.

APPEAL FROM CIRCUIT COURT

OF COOK COUNTY

234 T.A. 648

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant, the New York Central Railroad Company, from a judgment in the sum of \$11,833.33, in an action brought by the plaintiff for personal injuries alleged to have been caused by the negligence of the defendant. The plaintiff was employed by the defendant as a section hand on what is known as a "hump track," and was working for the first time in the "Gibson Yards" in Indiana, at the time that he was injured. The "hump track" is used for switching purposes. It is an inclined track. Cars descend the incline by the force of gravity, and are switched to the different tracks for which they are intended. The cars descend the incline at irregular intervals varying between 2, 3, 5, 15 and 20 minutes. The plaintiff was struck by one of the cars as it descended the incline. There was nothing to obstruct the view of the approaching car. At the time that he was struck the plaintiff was on the "hump" track, stooping over shoveling dirt.

The plaintiff alleges generally that the car was "negligently, carelessly and improperly" operated; and alleges specifically that the car was negligently and carelessly operated at "a rapid rate of speed, and without giving plaintiff any warning" of its approach. The defense of the defendant is that the injury of the plaintiff was not due to any negligence on the part of the defendant, but was due to the sole and proximate negligence of the plaintiff.



PROBATION DEPT.  
WASHINGTON

AT

NEW YORK OFFICE  
WASHINGTON

RECEIVED

284 T.A. 848

THE FOLLOWING INFORMATION WAS OBTAINED FROM THE RECORDS OF THE PROBATION DEPARTMENT:

This is an account of the activities of the individual, from the time

he was released from the Federal Reformatory for Women at Alderson, West Virginia, in 1934, to the present time. The individual is now residing at 1234 5th Avenue, New York City.

It is noted that the individual has been employed by the following firms:

1. "XYZ Company," New York City, from 1935 to 1936.

2. "ABC Corporation," New York City, from 1937 to 1938.

3. "DEF Limited," New York City, from 1939 to 1940.

4. "GHI Inc.," New York City, from 1941 to 1942.

5. "JKL Co.," New York City, from 1943 to 1944.

6. "MNO & Co.," New York City, from 1945 to 1946.

7. "PQR Ltd.," New York City, from 1947 to 1948.

8. "STU & Sons," New York City, from 1949 to 1950.

9. "VWX & Partners," New York City, from 1951 to 1952.

10. "YZA & Associates," New York City, from 1953 to 1954.

11. "BCD & Co.," New York City, from 1955 to 1956.

12. "EFG & Sons," New York City, from 1957 to 1958.

13. "HIJ & Partners," New York City, from 1959 to 1960.

14. "KLM & Co.," New York City, from 1961 to 1962.

15. "NOP & Associates," New York City, from 1963 to 1964.

16. "QRS & Sons," New York City, from 1965 to 1966.

The plaintiff testified substantially that on the day of the accident he went to work at seven o'clock in the morning; that he had never worked on the track or done that kind of work until the day he was hurt; that he worked on the "hump" track the entire morning before he was hurt; that he did shovel work; that the accident happened about three o'clock in the afternoon; that he was shovelling just the minute before the car hit him; that the car was three feet from him when he first knew that it was coming; that there were three other men working with him; that Ramonda Casela, one of the men, was the nearest to the car; that he, the plaintiff, heard somebody about three feet away "holler" before the car hit him, the plaintiff; that the switchman on the car was "hollering" and shouting at the time; that he, the plaintiff, did not know where the "boss" was at the time the car hit him, the plaintiff; that while he, the plaintiff, was working there that day "cars had gone along frequently that he had to get out of the way of;" that those cars "were sent by every five minutes;" that they were always "sent by just the same - sometimes from five to three minutes, sometimes two minutes in between; that when he went to work on the "hump track" his "boss" told him he would have to look out for the cars.

The following questions and answers are shown by the abstract:

"Q. On the other times on this day, before the time that you got hurt, when a car would come along there, you had to get out of the way, did somebody give you warning that the car was coming? Tell him to nod or shake his head in answer.

A. No.

MR. SPENCER: Let me put the question another way. On other times, not the time you got hurt, but other times that day when cars came down there, did somebody shout to you or give you warning that they were coming?

A. Yes. At other times the car would be fifty feet away when the boss would give a warning.

MR. SPENCER: The time you got hurt, the time the car hit you and you say you heard the car and heard the shouting when it was three feet away, what did you try to do then, or what did you do then?



The plaintiff testified substantially that on the day  
at the conclusion of the trial he was at home at night in the morning;  
that he had never visited the house at any time since he left it;  
that the day in the house; that he worked at the house; that the  
entire morning before he was hurt; that he did not work; that  
the plaintiff testified that there was a light in the afternoon; that  
he was sleeping; that the witness before the jury was not; that  
the car was there from the time he first knew that it was  
there; that there were three other cars parked with him; that  
there was a car, and at the time, and the witness at the time; that  
he, the plaintiff, never testified that there was a car; that  
before the car hit him, the plaintiff; that the witness on the  
car was "sitting" and standing at the time; that the witness  
left, and he knew where the "car" was at the time the car hit  
him, the plaintiff; that while he, the plaintiff, was driving  
there that the "car" was along the road; that he was in the car  
and not at the way of; that there were "two cars" of every five  
minutes; that they were always "out of the way" of the car; that  
there were no other witnesses, excepted the witness in the car; that  
then he went to work on the "truck" and "car" and the car  
would have been in the way for the car.

The following questions and answers were asked by the  
attorney:  
Q. On the evening of the 10th day, before the trial, did  
you not hear, when a car was being driven, that the car  
was out of the way, this was the first time you saw the car  
and the car was in the way of the car?  
A. Yes.  
Q. And on the 11th day, before the trial, did you  
hear, when a car was being driven, that the car was out of the  
way, this was the first time you saw the car and the car was  
in the way of the car?  
A. Yes.  
Q. And on the 12th day, before the trial, did you  
hear, when a car was being driven, that the car was out of the  
way, this was the first time you saw the car and the car was  
in the way of the car?  
A. Yes.  
Q. And on the 13th day, before the trial, did you  
hear, when a car was being driven, that the car was out of the  
way, this was the first time you saw the car and the car was  
in the way of the car?  
A. Yes.

PLAINTIFF'S INTERPRETER: When he got hurt?

MR. SPENCER: Yes, when he saw the car three feet away and heard the shouting?

A. I was looking out for myself. I tried to get away from the car.

Q. Did the boss before several of these cars came along, when they came along before the car that hit you, did the boss tell the men, including you, to step away from the tracks?

A. No.

Q. Did the boss tell you not to work on the tracks then, that there were cars coming along there? A. No."

Ramonda Casola testified on behalf of the plaintiff in substance that he saw the car hit the plaintiff; that it came down the "hump" going east; that right at the time the plaintiff was hit he, the plaintiff, had a shovel in his hands and was "scratching up;" that when the car was about five feet away somebody "hollered" - "yelled" at the plaintiff to "get out of the way;" that there was a man on the car; that the car was going about fifteen miles an hour; that at the exact moment when the plaintiff was hit, he, the witness, was watching out for himself; that he did not "holler" at the plaintiff; that it was none of his, the witness', business; that the "boss" is supposed to watch out for the men; that the boss was there; that the cars came down the line "pretty frequently" that morning; that "twenty, fifteen minutes a car would come over all the time - one after another they came down there;" that there was a car just ahead of the one <sup>that</sup> struck the plaintiff and there was one coming just back of it; that the boss looked out for the men, what they do about it; that he "hollered to us, "Watch, boys;" that when the car would come about twenty feet away he would say, "Watch out, boys;" that ordinarily when the boss would give the warning to the men the car would be about twenty feet away or maybe twenty-five; that the "boss did not warn us every time a car came along, but most of the time he hollered to us to watch out if the men were in the way;" that these cars came along every two or three minutes; that sometimes the men would get away themselves; that the foreman was close to him, about three feet away, and yelled, "Look out, boys" when this car was coming; that





the plaintiff was about fifteen or twenty feet nearer the car than the witness was; that the plaintiff didn't know the car was coming on the track.

Martin Theis, on behalf of the defendant testified that on the day of the accident he was boss or foreman from one o'clock on; that the plaintiff was working under his orders at the time of the accident; that the plaintiff had not been working under his orders all day; that it was just after dinner that the plaintiff was under his orders; that the plaintiff had never worked for him or under his orders before that day; that he, the witness, had never seen the plaintiff do any work like this about the yards before that day; that it was the first day he worked there at that kind of work; that he, the witness, warned the men to get out of the road of the cars; that he warned them as soon as one of the cars came down to step out and stay out until the cars "go by and until I tell them to get in;" that he saw the plaintiff hit; that there was one car that he knows of that went over the "hump" before the car that hit the plaintiff, and that there may have been some more; that it must have been 150 or 100 feet, or something like that, from the car that hit the plaintiff to the car that went over before that; that there was one more car following the car that hit the plaintiff; that there was a man riding on the front of the car that hit the plaintiff; that he, the witness, was about ten feet or something like that from the plaintiff when he was hit; that there were only two men in the gang that was working at the time of the accident, and one man had gone after water; that he, the witness, gave the plaintiff warning about the cars coming down; that he, the witness, said "Look out, boys, stay out of the way of the cars coming," and that then the plaintiff stepped over and got hit; that the plaintiff "just didn't listen" to the warning; that the car that hit him must have been going about ten miles an hour, something like that; that it is about 300 feet from the top of the





"hump" to the place where he was hit; that there is no obstruction to the view from where the plaintiff was hit to the top of the "hump;" that when the plaintiff was hit he was stooping over with his shovel on the track trying to get a shovel full of dirt; that he, the witness, was within ten feet of the plaintiff; that he, the witness, called to him and told him that the car was coming; that the car must have been about 100 or 150 feet, something like that, from the plaintiff when he, the witness, called to the plaintiff and told him the car was coming; that he, the witness, "hollered" at the plaintiff when the car was at the "hump," which is about 300 feet from the place of the accident; that he "hollered" at the plaintiff again and tried to get him out; that besides the warning to plaintiff he tried to grab him, but that he couldn't grab him in time; that he, the witness, said "Look out, boys, there is another car coming; stop until I tell you to get in again;" that the plaintiff didn't do it but kept on at work; that the "hump" is about the most dangerous place to work around Gibson.

Matt B. Theis, on behalf of defendant testified that he was the boss of the plaintiff at the time the plaintiff was hit; that Martin Theis, the son of witness, was another foreman working with the witness at the time of the accident; that he, the witness, did not see the accident, but that he saw the car that hit the plaintiff; that he, the witness, was on the opposite side of the track from where the plaintiff was working; that the day of the accident was the first day the plaintiff had worked for the witness; that when they started to work that morning at seven o'clock he, the witness, gave every man instructions to look out for the cars on the "hump" because it was a dangerous place to work; that he told them not to get "in the track until I tell them;" that the plaintiff was present when he gave those instructions; that at the time the plaintiff was hurt there was one car coming over the "hump" and there were





some following; that at the time plaintiff was hit he, the witness, was about 30 feet away; that the first car that was following the car that hit plaintiff was about 250 feet up - pretty near up to the "hump."

Frank G. Colgrove, a witness on behalf of the defendant testified that he saw the accident; that he was sitting in the switch shanty; that he was the switch tender at the time; that whenever the cars came off of the "hump" there he threw the switch and switched a car into the particular track that it belonged to; that he was about 30 feet from the place of the accident; that he saw the plaintiff just before he was hit; that the men working along the track would get out of the way every time a car would come down; that this time when the car came over the plaintiff just happened to be down there stepped over; that the foreman was leaning against the railing of the subway about five feet from the plaintiff; that he, the witness, turned his head and didn't look at the car when it hit the plaintiff; that the car was about ten feet away from the plaintiff when he, the witness, last noticed it; that the plaintiff just went in the track as the car came down; that the foreman had warned the men to get outside; that the car was at the top of the hill about 300 feet away when the plaintiff was out of the way of the car, clear of the track; that up to the time the car got within ten feet of him he was in the clear about two feet from the track; that then he stepped into the track and the car hit him; that there were some cars that went over the "hump" before the car that hit him; that the car that hit him was going about eight miles an hour; that when the cars came down the men always wait until the car gets on top of them and then they step out of the way; that the men work whenever they get a chance; that he has seen many of them step in towards a moving car.

Claude A. Garnett, a switchman, testified on behalf



1. The first part of the document is a letter from the President of the United States to the Congress, dated January 3, 1862. It is a long and detailed letter, covering many topics, including the state of the Union, the progress of the war, and the administration of the government. It is a very important document, as it provides a clear and concise statement of the President's policies and goals.

[illegible]

of the defendant that he was on the car that struck the plaintiff; that he first saw the plaintiff twenty-five or thirty feet away, just as he stepped in the track; that the plaintiff was bending over with his shovel the first time that he, the witness, noticed him; that he, the witness, "hollered" at him to get out of the way; that the car was going about six or eight miles an hour; that he, the witness, had his hands on the brake; that there was a car preceding him over the "hump" down a distance ahead of him; that there was a car following him; that besides yelling at the plaintiff, he, the witness, tightened up his brake and tried to stop.

Andy Madrid, on behalf of the defendant testified that he was working in the same gang with the plaintiff; that he did not see when the car struck the plaintiff; that the foreman in the presence of the plaintiff told them that morning, "Boys, go to work on that hump," and he said to watch out in there, that it was a very bad place; that one car had gone down before the car which hit the plaintiff; that he saw the plaintiff before he was hit; that the foreman, Martin Theis, said, "Boys, here is a car coming from the hump;" that the plaintiff was standing on the side just where he, the witness, was standing; that he, the witness, does not know what the plaintiff did next; that he did not see the car hit the plaintiff; that a car came every five minutes, something like that; that sometimes it would be longer, sometimes shorter; that when a car would come along, before the car that hit the plaintiff, the "boss would tell us boys to watch out, and we would get away, the plaintiff with the rest of us;" that before this car that hit the plaintiff came, the "boss said for us to stay away until he gives the order and then to go to work;" that the "boss tried to get hold of the plaintiff but it was a little bit too late."

The plaintiff introduced testimony to the effect that Madrid, in a conversation before he testified, had made the fol-



at the defendant's house he was in the act of writing the indictment;  
that he first saw the plaintiff's representative on July 1st, 1907;  
that he was stopped in the street; that the plaintiff was holding  
open with his sword the flag like that he, the witness, pointed  
him; that he, the witness, "declined" to sign in that way on the way;  
that he saw the plaintiff's representative on July 1st, 1907;  
the witness, that his hands on the ground; that there was a day pass  
written on the "book" from a witness named as John; that there  
was a man following him; that he was being held at the plaintiff's;  
that the witness, although up his hands was held in that way;  
that he was stopped in the same group with the plaintiff; that he  
did not see where the man showed the plaintiff; that he showed in  
the presence of the plaintiff's representative that morning; "they" go to  
stand on that day," and he said to witness and to himself, that in the  
very hot place; that not only had some other witness and not with him  
the plaintiff; that he saw the plaintiff before he was hit; that in  
two men, "John" said, "they" were in a car coming from the  
street; that the plaintiff was standing in the back door of  
the witness, was standing; that he, the witness, gave his hand with  
the plaintiff's hand; that he did not see the hit the witness  
felt that there was some other witness, something like that; that  
sometimes it would be longer, sometimes shorter; that there was  
some other, before the witness hit the plaintiff, the "book"  
would tell me how to write it, and he would get away, and he would  
with the rest of me; that he was with me and the rest of the  
other, the "book" told me how to write it; that he was with me and  
and there is the plaintiff; that the "book" told me how to write it;  
plaintiff was in the witness's car that day.

following statement: "All I see we worked on the track and the boss always yelled, 'Look out, watch yourself, boys,' and they all get away from that car and they went back to work. Gelle was the first one that got on the track and the boss hollered, but he was too late and the car hit him. As the car hit him I helped him up, put water on him."

The question whether the defendant was negligent or not is narrowed down to the single issue whether sufficient warning was given to the plaintiff of the approaching car. Counsel for the plaintiff says "the only debatable question in this case is: Was the warning given to plaintiff sufficient to enable plaintiff to get out of the way of the approaching car?"

The position which counsel for the defendants assume in regard to the question whether the plaintiff was warned of the approach of the car is this: That the defendant was under no legal duty to warn the plaintiff of the approach of the car; but that, as a matter of fact, sufficient warning was given. The question whether the defendant was under a legal duty to give reasonable warning to the plaintiff of the approach of the car, depends upon the question whether such warning was required under the general rule imposing the duty on an employer to use reasonable care for the protection of his employees. Mixed Coal Co. v. Clark, 197 Ill., 514, 516; Bonate v. Peabody Coal Co., 248 Ill., 422, 426. It has been expressly held under the Federal Employer's Liability Act that the employer owes to his employees the duty of exercising ordinary care for his employees' safety. DeBaur v. Lehigh Valley R. Co., 269 Fed. 964, 966; Reed v. Director General, 258 U. S. 92, 95.

On the evidence in the case at bar the question whether ordinary or reasonable care required the defendant to give the plaintiff warning of the approach of the car, is a question for the jury. In our opinion the evidence would not justify us in holding, as a





matter of law, that the defendant was not under a legal duty to give the warning. The place where the plaintiff was working was an extremely dangerous one. Martin Theis, the foreman for the defendant, who testified on behalf of the defendant, said that it was "about the most dangerous place to work around Gibson." The evidence shows that the cars descended the "hump" track continuously during the day, at irregular intervals varying from two to twenty minutes. The day of the accident was the first day that the plaintiff had ever <sup>been</sup> engaged in the work in question. He was shovelling dirt on the "hump" track; and the nature of the work would not permit him adequately to protect himself in the circumstances. It is obvious that he could not do his work efficiently and at the same time keep a lookout commensurate with his dangerous situation. At the time that he was struck by the car he was stooping over shovelling dirt on the "hump" track. Although counsel for the defendant deny that the defendant was under any legal duty to give warning of the approach of the car, it is a significant fact that the two foremen were present when the plaintiff was injured, and had been giving warning of the approaching cars, and one of the foremen had actually warned the plaintiff of the approach of the car in question. Apparently the defendant recognized that warning should be given, and in fact gave warning, although defendant maintains that warning was given gratuitously. Counsel for the defendant cite a number of cases which they maintain support their contention that on the facts in the case at bar the defendant was under no legal duty to warn the plaintiff of the approach of the car. The case on which they mainly rely is the case of Aerkfets v. Humphreys, 145 U. S. 412. They assert that "The facts in every essential particular bring this case clearly within the principles announced in the Aerkfets case." We do not agree with counsel. In our opinion





there is a material difference between the facts in the two cases. Facts in the case of Aerkfets v. Humphreys, supra, which clearly distinguish that case from the case at bar are these: The plaintiff was a repairer of tracks, who, at the time he was injured, was working alone, not with others. There was no foreman present. The plaintiff had been employed in the work about eighteen months and was familiar with the manner in which the work was done. He was working on the tracks in an ordinary switch yard, not on a "hump" track, which is a track that is considered unusually dangerous.

We are of the opinion that there is sufficient evidence in the case at bar to warrant the jury in finding that the defendant was under the legal duty to give reasonable warning of the approach of the car.

The inquiry that follows is, was the warning which the defendant gave sufficient in the circumstances. The precise issue involved in this question is, whether the warning was given within a reasonable time to afford the plaintiff an opportunity to avoid the approaching car. The car was going at a rate of speed variously estimated by the witnesses at 5, 8, 10 and 15 miles an hour. According to the testimony for the defendant, the fireman, Martin Theis, "called to" the plaintiff when the car was about 150 feet away, and also when the car was "close" to the plaintiff; the switchman on the car "hollered" to the plaintiff when the car was about 25 or 30 feet away. The plaintiff testified, on the other hand, that the car was three feet from him when he first saw it and first heard the "shouting" or warning. Ramona Casola, a witness for the plaintiff, testified that the car was about five or six feet away from the plaintiff when "somebody yelled" at the plaintiff; that ordinarily when the boss would give warning of an approaching car, the car





would be about twenty or twenty-five feet away. The fact is undisputed that the plaintiff was on the track stooping over shoveling dirt when he was struck. The theory of the defendant is that the plaintiff suddenly stepped from a place of safety onto the track in front of the car. There is evidence which tends to support this contention. There is evidence, however, which would render such a contention improbable and incredible. We do not deem it necessary to review in detail the facts relating to this issue, as we have previously set out fully all of the material testimony in the case.

Counsel for the defendant argue that "The foreman and servants of the defendant were not to presume that a man occupying a place of safety would suddenly step into the path of impending danger." From the verdict of the jury it is evident that the jury did not adopt the defendant's theory of the accident. In our opinion there is sufficient evidence to sustain the verdict of the jury.

Counsel for the defendant further contend that "the plaintiff assumed the risks of his employment, including the danger of being struck by a car." If the contention of counsel for the defendant is correct, then the plaintiff, as a matter of law, would be barred from maintaining his action. But the contention of counsel for the defendant is concluded by the views which we have previously expressed. Since we have held that there is sufficient evidence to sustain the jury in finding that the defendant was under the legal duty to give the plaintiff a reasonable warning of the approach of the car, it necessarily follows that we must hold that the plaintiff did not assume, as one of the risks of his employment, the danger of being struck by the car. If the defendant was under a legal duty to give reasonable warning to the plaintiff, the non-compliance with the duty by the defendant would not be one of the risks assumed by the plaintiff. Donato v. Pesbody Coal Co.



would be about twenty or twenty-five feet long. The fact is that  
 I thought that the witness was not the best witness to give evidence  
 that day when he was asked. The fact of the witness is that  
 the witness suddenly stopped from a place of about half the  
 length in front of the car. There is evidence which tends to show  
 that this conclusion. There is evidence, however, which tends  
 to show that a conclusion is reached and inevitable. It is not  
 clear is necessary to state in detail the facts relating to this  
 case, as we have previously set out all of the material  
 appearing in the case.

General Lee the witness again that the witness was  
 not the best witness to give evidence that a man standing  
 a place of about half the length of the car. There is evidence  
 which tends to show that a conclusion is reached and inevitable. It is not  
 clear is necessary to state in detail the facts relating to this  
 case, as we have previously set out all of the material  
 appearing in the case.

supra. In arguing the question of assumed risk counsel for the defendant contend that there is no evidence of a definite, uniform and certain custom of the defendant to warn the men of approaching cars. Counsel for the defendant further contend that the court erred in not allowing the defendant to show that there was no such custom. The two positions are not consistent. If there is no evidence of such a custom, there was no necessity of introducing evidence that there was not such a custom. But aside from this, the question whether there was or was not such a custom is immaterial in the view we have taken of the case. Even if there was not a custom of giving reasonable warning of the approach of cars, according to the opinion we have reached the jury would have been justified in finding, on the evidence, that it was the legal duty of the defendant to give such warning.

The final contention of counsel for the defendant is that "the negligence of the plaintiff was the sole and proximate cause of his injury." In considering this question it may be proper to state that under the Federal Employer's Liability Act, even though the plaintiff's negligence contributed with the defendant's negligence to cause the injury, the plaintiff's right of action would not be defeated. The plaintiff's negligence, if any, may only be considered in mitigation of damages. "It is only when plaintiff's act is the sole cause - when defendant's act is no part of the causation - that defendant is free from liability under the Act." Grand Trunk Ry. Co. v. Lindsay, 233 U. S. 42, 47.

Since we have held that there is sufficient evidence to sustain the verdict of the jury that the defendant was negligent, it logically follows that we must hold that the plaintiff's negligence if any, was not the sole, proximate cause of his injury.

For the reasons stated the judgment of the trial court is affirmed.

AFFIRMED.

Hatchett, P. J., and McSurely, J., concur.





39232

217 - 28874

CORNING GLASS WORKS,  
a corporation,

Appellee,

vs.

CHICAGO GLASS PRODUCTS CO.,  
a corporation,

Appellant.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

234 I.A. 648

MR. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant, the Chicago Glass Products Company, from a judgment in the Municipal Court of the City of Chicago, in favor of the plaintiff, the Corning Glass Company, in an action on a contract involving a case of the first class. A statement of claim was filed by the plaintiff alleging that the defendant was indebted to the plaintiff in the sum of \$10,195.70; and also alleging an account stated. The defendant filed an affidavit of merits which was stricken from the files by order of the court. An amended affidavit of merits was filed by the defendant, and that also was stricken from the files. A default was thereupon entered against the defendant; and damages were assessed against the defendant on "the evidence contained in the affidavit of plaintiff's claim," in the sum of \$10,195.70.

The principal grounds on which the defendant asks for a reversal of the judgment are as follows: First, that the statement of claim does not state a cause of action; second, that the affidavit of claim is insufficient; third, that the trial court "abused its discretion in assessing damages immediately on the sole basis of the affidavit of claim, and without giving an opportunity to the defendant to be heard on the question of damages."





The statement of claim and the affidavit of claim are in substance as follows:

"STATE OF ILLINOIS     }  
CITY OF CHICAGO        }  
FIRST DISTRICT         } ss.

FIRST CLASS - STATEMENT AND AFFIDAVIT OF  
PLAINTIFF'S CLAIM.  
IN THE MUNICIPAL COURT OF CHICAGO.

|   |   |                        |
|---|---|------------------------|
| Corning Glass Works,<br>a corporation,        | } | First Class No. 462884 |
| vs.   |   | Claim for \$10,500.    |
| Chicago Glass Products Co.,<br>a corporation. |   |                        |

Plaintiff alleges that on, to wit; the dates hereinafter set forth, the defendant purchased from the plaintiff, goods, wares and merchandise at the current market prices which were also the agreed prices of the merchandise shown in said statement and promised and agreed to pay therefor; that thereupon the plaintiff delivered to the defendant the following merchandise to wit:

1922

|          |    |      |       |             |
|----------|----|------|-------|-------------|
| August 2 | To | Edas | ----- | \$8, 680.54 |
| " 3      | "  | "    | ----- | 76.66       |
| " 3      | "  | "    | ----- | 929.10      |
| " 12     | "  | "    | ----- | 311.71      |
| " 24     | "  | "    | ----- | 227.58      |
|          |    |      |       | -----       |
|          |    |      |       | \$10,195.70 |

That although often requested by the plaintiff to make payment of said amount, the same has not been paid, wherefore plaintiff sued for the sum of \$10,195.70.

That on to wit the 2nd day of April, A.D. 1923, said account became an account stated, said amount having been admitted by the defendant to be correct and the defendant promised to pay same. That there is due to plaintiff interest at the rate of 5% to the date of judgment.

STATE OF ILLINOIS     }  
COUNTY OF COOK       }  
CITY OF CHICAGO       } ss

Henry Perlman, being first duly sworn, on oath states that he is the duly authorized agent of plaintiff in the above entitled cause; that he has knowledge of the facts; that said cause is a suit for



The statement of claim and the exhibits to claim

are as follows:

1. The claimant is a resident of the City of Chicago, Illinois, and is a citizen of the United States of America.

2. The claimant is a resident of the City of Chicago, Illinois, and is a citizen of the United States of America.

3. The claimant is a resident of the City of Chicago, Illinois, and is a citizen of the United States of America.

4. The claimant is a resident of the City of Chicago, Illinois, and is a citizen of the United States of America.

5. The claimant is a resident of the City of Chicago, Illinois, and is a citizen of the United States of America.

6. The claimant is a resident of the City of Chicago, Illinois, and is a citizen of the United States of America.

7. The claimant is a resident of the City of Chicago, Illinois, and is a citizen of the United States of America.

8. The claimant is a resident of the City of Chicago, Illinois, and is a citizen of the United States of America.

9. The claimant is a resident of the City of Chicago, Illinois, and is a citizen of the United States of America.

10. The claimant is a resident of the City of Chicago, Illinois, and is a citizen of the United States of America.

11. The claimant is a resident of the City of Chicago, Illinois, and is a citizen of the United States of America.

the recovery of money only; that the nature of plaintiff's demand is as above set forth and that there is due to the plaintiff from the defendant, after allowing to defendant all its just credits, deductions and set-offs the sum of Ten Thousand, One Hundred Ninety-five dollars and 70/100 (\$10,195.70)."

In discussing the question whether the statement of claim states a cause of action, counsel for the defendant argue that the statement should be tested by the rules governing declarations at common law, since section 36 of the Municipal Court Act provides that cases of the first class shall be commenced and prosecuted in the same manner as suits and proceedings in the Circuit Court, unless the Municipal Court shall adopt rules providing that the practice in cases of the first class shall be the same as cases in the fourth class; that the record does not show that the Municipal Court has adopted such rules, and that it will not be presumed that such rules have been adopted by the Municipal Court. Counsel for the plaintiff in reply contend that the statement of claim alleges a cause of action, even though in determining the sufficiency of the statement, the rules of common law should be applied; but counsel further maintain that the sufficiency of the statement should be decided by the rules relating to the cases of the fourth class, since according to the opinion in the case of Ishig v. Chicago City Ry. Co., 192 Ill. App. 487, 493, 494, it must be presumed, in the absence of proof to the contrary, that the Municipal Court adopted rules providing that the practice in cases of the first class should be the same as is provided for cases of the fourth class.

In the view we take of the question under discussion, it will not be necessary for us to determine, as one of the reasons for our decision, whether the rules of the common law, or different rules applicable to cases of the fourth class, should be considered in testing the sufficiency of the statement of claim in the case at bar; and consequently, we may pretermitt a decision





of the question whether the presumption in the case of Labitz v. Chicago City Ry. Co., supra, was correctly indulged.

The record in the case at bar shows that the judgment was entered by default. In such state of the record, according to the rule of decision announced by the Supreme Court of Illinois, in the case of Lyons v. Kanter, 285 Ill. 336, the statement of claim, even in a case of the fourth class, must set forth a cause of action. It is immaterial, therefore, on the record in the case at bar, whether the Municipal Court has adopted rules providing that the practice in cases of the first class shall be the same as is provided for cases of the fourth class. Irrespective of that question the statement of claim on the record in the present case, must state a cause of action; and as the action in the case at bar is brought on a contract and not on a statutory right, the cause of action which must be stated is a cause of action at common law. It would follow that where the question of the sufficiency of the statement of claim, as in the case at bar, is involved in an action on a contract, and arises on a judgment by default, there is no difference in substance between a statement of claim in a case of the fourth class and a declaration at common law. There is a great deal of confusion and uncertainty in the decisions of the Appellate Court cited by counsel for the plaintiff and counsel for the defendant, on the question generally whether it is necessary for a statement of claim in cases of the fourth class to state a cause of action, and if it is not necessary, what would constitute a sufficient statement of claim. We do not think we would derive much assistance from a review of these cases. We base our opinion on the rule of decision announced by the Supreme Court in the case of Lyons v. Kanter, supra. That case was an action in tort for a malicious prosecution, but in construing section 40 of the Municipal Court Act, which provides for pleadings in cases of the fourth class, including actions on contract and in tort, the court, reviewed



of the question whether the government in the case of *United*

*States v. Smith* (1890) was correctly decided.

The answer is that it was not, and that the judgment

was reversed by the court. In such cases as the present, the court

is the one to decide whether the government is the owner of the property.

In the case of *United States v. Smith*, the court held that

the government was the owner of the property, and that the

judgment was reversed. It is the duty of the court to decide

the question, and it is the duty of the court to decide it

correctly. In the case of *United States v. Smith*, the court

is the one to decide whether the government is the owner of the

property, and it is the duty of the court to decide it

correctly. In the case of *United States v. Smith*, the court

is the one to decide whether the government is the owner of the

property, and it is the duty of the court to decide it

correctly. In the case of *United States v. Smith*, the court

is the one to decide whether the government is the owner of the

property, and it is the duty of the court to decide it

correctly. In the case of *United States v. Smith*, the court

is the one to decide whether the government is the owner of the

property, and it is the duty of the court to decide it

correctly. In the case of *United States v. Smith*, the court

is the one to decide whether the government is the owner of the

property, and it is the duty of the court to decide it

correctly. In the case of *United States v. Smith*, the court

is the one to decide whether the government is the owner of the

property, and it is the duty of the court to decide it

correctly. In the case of *United States v. Smith*, the court

its decisions in the cases of Gilman v. Chicago Bys. Co., 208 Ill. 305, and Kuberg v. City of Chicago, 31 Ill. 404, and held as follows (p. 308): "A statement of claim in actions of the fourth class in the Municipal Court which does not state a cause of action does not require an answer from the defendant, and if a judgment by default is rendered upon such a statement, it may be reversed, and such a statement will not, of itself, sustain a judgment." The cause of action contemplated by the case of Lyons v. Kantar, supra, is necessarily a cause of action at common law for the reason, as we have previously stated, that the action in the case at bar is an action ex contractu.

In the case of Gilman v. Chicago Bys. Co., supra, the court said (p. 308) that the effect of the language in section 40 of the Municipal Court Act was "to do away with all objections to the statement of claim which might be made to a declaration by special demurrer and to recognize only objections going to the merits of the case." The only real difference that we perceive between a declaration at common law and the statement of claim required in cases of the fourth class in the Municipal Court in which the judgment is by default, is largely a matter of phraseology. The declaration at common law ordinarily is drafted with precision and exactness according to a technical legal phraseology, which has been embodied in a recognized formula. The statement of claim necessary in cases of the fourth class, where the judgment is by default, although required to state a cause of action, may express the cause of action in any form whatever, provided that the essential elements of the cause of action are set forth. In modern practice even a declaration at common law may also be drawn in informal language. In the case of Miller v. Blag, 60 Ill. 304, in discussing common law pleadings the court said (p. 306): "The modern practice in the courts of both this country and Great Britain is more liberal than it was anciently. Each of the





technical rubbish has been brushed away, and the courts left more free and less trammelled in the administration of justice. The tendency of courts in modern times has been, as far as possible, to dispense with mere technical forms, so that there is enough to enable justice to be fully and fairly administered. But in pleading, under the statute a party has the right to interpose a special demurrer to pleadings, and thus present questions of form \* \* \* ."

In the case of Grace & Hyde Co. v. Sunborn, 124 Ill. App. 472, the court said (p. 479): "It is not altogether easy to draw with precision the line on one side of which will fall declarations, which, because of the generality of their language, state no cause of action, and on the other side declarations which, for the same reason, defectively state causes of action. Starting, however, from the reasonable proposition which is the basis of the rules of pleading, as it exists today, that the main purpose of pleading in courts of law is accomplished when, by reasonably intelligible allegations, the opposing party is advised of the case to be made against him \* \* we think it must be said that after verdict the second additional count in case at bar will sustain a judgment, and that it is at the worst a defective statement of a valid cause of action."

We are of the opinion that the statement of claim in the case at bar sets forth a cause of action at common law.

We do not think that the statement of claim would have been good at common law on special demurrer, or on motion in the Municipal Court, to make it more specific, but in our view it would have been good on general demurrer at common law, since we are of the opinion that it states a cause of action at common law. And on the record, on this appeal, the question to be determined is whether the statement of claim sets out a cause of action at





common law. The statement of claim is loosely and inaccurately drawn, but we think that it contains the elements which are essential to constitute a cause of action at common law. The objection that the statement of claim does not state a cause of action was not raised in the trial court. The objection is urged for the first time on this appeal. It is permissible to raise the question for the first time on appeal, (3 Corpus Juris, p. 786); but in such case the statement of claim will be construed liberally and supported by every legal intendment. O'Rourke v. Faroul, 241 Ill. 276, 279, 280; Wagner v. C. R. I. & P. Ry. Co., 277 Ill. 114, 119. "It must be shown that there is a total absence of an averment of some fact essential to the existence of the cause of action." 3 Corpus Juris, pp. 786, 787. When the statement of claim is compared with the count of indebitatus assumpsit in a declaration at common law, it will be seen, after all reasonable intendments and presumptions are indulged in favor of the statement of claim, that the statement of claim is substantially the same as the count of indebitatus assumpsit. The statement of claim contains allegations, in effect, that the plaintiff sold and delivered goods and merchandise to the defendant, at the defendant's instance and request; on certain dates; at certain prices; for which goods and merchandise the defendant promised to pay; that the defendant, although requested, refused to pay; to the damage of the plaintiff in the sum of \$10,195.70. The statement of claim deviates from the customary form of a declaration at common law by alleging that the defendant "purchased" the goods, instead of alleging that the goods were sold to the defendant at the defendant's "instance and request"; but the term "purchased" connotes that the goods were sold to the defendant at his "instance and request." The word purchase has two significations - a popular but restricted one, and a technical one. In its popular sense purchase means the acquisition of property by one person





from another by voluntary act and for an agreement; in its technical sense purchase means the acquiring of title to lands by any means except by descent. 32 Cyc.pp. 1264, 1265. The word "purchased" in the statement of claim is evidently used in its popular sense, and means the acquisition of the goods and merchandise voluntarily by the defendant. The abbreviation "adise." is informally used in the statement of claim, but we are of the opinion that since the meaning of the abbreviation is a matter of common knowledge, we may take judicial notice that it denotes merchandise. In Webster's New International Dictionary the abbreviation is recognized as meaning merchandise. The venue is not laid in the body of the statement, but as the action is a transitory one, it was not necessary to lay the venue in the body of the statement. In transitory actions the practice of laying a venue is useless and obsolete. 13 Cyc. p. 95. Moreover, it is a matter that could only be taken advantage of by special demurrer at common law; (St. L. J. & C. R. R. Co. v. Thomas et al., 47 Ill. 116, 119), or by a motion in the Municipal Court to strike the statement of claim from the files. The statement of claim does not explicitly allege that the merchandise delivered to the defendant was the same merchandise that was purchased by the defendant. The statement of claim says that the "following" merchandise was delivered to the defendant, instead of saying the "said" merchandise. From other allegations in the statement of claim, however, we think that by reasonable intendment it may be presumed that the merchandise, which is alleged to have been delivered, was the merchandise which was purchased. The "goods, wares and merchandise" mentioned in the statement are not described with particularity, but such description is not required. 1 Chitty's Pleading, p. 448, star page 353\*, (16th Am.Ed.). In alleging damages, the statement of claim does not use the customary language of a declaration





at common law, but says "wherefore the plaintiff sues for the sum of \$10,195.76." We think, however, that the language of the statement of claim in this respect, when taken in connection with the entire statement, implies that the plaintiff was damaged to the amount stated.

In answer to the objection of counsel for the defendant that the affidavit of claim is insufficient because it does not set forth the nature of the plaintiff's demands, it may be stated that since it is permissible for the affidavit to refer to the statement of claim (Gottfried v. The German National Bank of Chicago, 91 Ill. 75, 76; Stamber v. Stamber, 217 Ill. App. 365, 368), as was done in the affidavit in the case at bar, and since we have held that the statement of claim is sufficient, it follows that the affidavit of claim is also sufficient.

The objection of counsel for the defendant that the court abused its discretion in assessing damages without allowing counsel for the defendant "to introduce evidence and cross-examine the witnesses," is not well taken. The defendant had the right to appear when the damages were assessed, and to cross-examine the plaintiff's witnesses, and to introduce evidence on the question of damages. Flaff v. Pacific Express Co., 251 Ill. 243, 247. But the defendant was only entitled to this right upon demand. Leslike v. Grant, 120 Ill. App. 74, 75, 76; Werner v. Honda, 228 Ill. App. 153, 158. And the record does not show that when the damages were assessed any demand was made by the defendant to cross-examine the witnesses, or to introduce evidence.

Counsel for the defendant maintain that the affidavit of merits traverses completely the plaintiff's allegation of an account stated. In view of the fact that we have held that the plaintiff's statement of claim sets out a cause of action independently of the allegations of an account stated, and in



It appears that the plaintiff's claim for the sum of \$10,000.00, as alleged, is not supported by the evidence in this case, and that the plaintiff's claim is not supported by the evidence in this case.

It appears that the plaintiff's claim for the sum of \$10,000.00, as alleged, is not supported by the evidence in this case, and that the plaintiff's claim is not supported by the evidence in this case.

It appears that the plaintiff's claim for the sum of \$10,000.00, as alleged, is not supported by the evidence in this case, and that the plaintiff's claim is not supported by the evidence in this case.

It appears that the plaintiff's claim for the sum of \$10,000.00, as alleged, is not supported by the evidence in this case, and that the plaintiff's claim is not supported by the evidence in this case.

view of the further fact that the court struck from the files the defendant's affidavit of merits in its entirety and the action of the court in this respect is not questioned in defendant's brief, except as to the account stated, it is unnecessary to consider the question whether the defendant's affidavit of merits sufficiently traverses the allegations of the statement of claim of an account stated. Such an issue, even if properly raised by the pleadings, would be an immaterial one in the view that we have taken of the case.

For the reasons stated the judgment is affirmed.

JUDGMENT AFFIRMED.

Ketchett, F. J., and Keady, J., concur.



After the further fact that the same result from the film  
the statement's reference to matter in the history and the  
action of the word in this respect is not mentioned in the  
text's part, though we do not know what it is. It is necessary  
to consider the question whether the statement's reference to  
matter and history between the statement of the statement  
of claim of the statement, such as in the text, even if it is  
related to the statement, such as in the statement, and in the  
text as part of the text.

For the statement about the statement in the text.

Statement about the statement.

Statement about the statement, 1.1, and history, 1.1, and history.

935

277 - 23035

3924a

BURTON BARNETT,  
Appellant,

vs.

ELIZABETH J. HOYT and  
A. ROSE HOYT,  
Appellees.

APPEAL FROM MUNICIPAL COURT

OF CHICAGO.

234 I.A. 648

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an appeal by the plaintiff, Burton Barnett, from a judgment of the Municipal court of Chicago in favor of the defendants, Elizabeth J. Hoyt and A. Rose Hoyt, in an action of forcible detainer brought by the plaintiff.

The ground of the action is that the defendants failed to pay the rent in full in accordance with the terms of a written lease to a certain building. According to the provisions of the lease the rent was payable monthly in advance in the amount of \$750. For the month of April, 1923, the defendants sent the plaintiff a check for \$715, having deducted \$35 for repairs to the roof of the building. The check was returned by the plaintiff with the statement that unless the full amount of \$750 was paid the lease would be cancelled. The lease contained the following provision: "Lessor to pay taxes, insurance, repair roof and exterior of the building." On the trial it was stipulated between counsel that the roof was in "bad shape and needed repairs and that the reasonable cost of such repairs was \$35." Counsel for the defendants objected that evidence of such facts was incompetent, irrelevant and immaterial. The court overruled the objection. It is undisputed that the defendants notified the plaintiff that the roof needed repairs, and that the plaintiff refused to make the repairs.



100 - 1000

221A, 648

221A, 648

221A, 648

221A, 648

221A, 648

221A, 648

221A, 648

221A, 648

It is contended by counsel for the plaintiff that in an action of forcible detainer, a tenant cannot show "that rent has been paid in full, by deducting from the rent cost of repairs made to demised premises;" that "such action amounts to changing the issues to assumpsit and recoupment." No authorities are cited by counsel for the plaintiff. We do not agree with the contention of counsel for the plaintiff. We do <sup>not</sup> think that the question of recoupment is involved. If the defendants had the lawful right to deduct the cost of making the repairs from the rent, the balance was the amount lawfully due to the plaintiff. The rule is well established that if the landlord fails to make repairs in violation of his covenant, the tenant may make the repairs and deduct the cost from the rent. Crawwell v. Allen, 151 Ill. App. 404; McFarlane v. Pierson, 31 Ill. App., 556; Wright v. Lattin, et al., 38 Ill., 293. The question involved in actions of forcible detainer is whether the defendant unlawfully withholds possession of the premises. Woodbury v. Ryel, 128 Ill. App. 459. Since in the case at bar there was an express covenant on the part of the plaintiff to repair the roof, and since it is undisputed that the repairs were needed and that the cost of repairs was reasonable, the amount tendered by the defendant to the plaintiff was the amount lawfully due to the plaintiff. Consequently the defendants were not unlawfully withholding the premises.

It is further contended by counsel for the plaintiff that the trial court "erred in refusing to admit testimony offered by the plaintiff to the effect that the special provision in the lease relating to the repair of the roof was inserted prior to the execution of said lease, and that said repairs were made to the roof at that time at an expense of several hundred dollars to the landlord; and for that reason, and for that reason alone, the special provision was inserted in the lease." Counsel for the plaintiff argue that the testimony would explain the provision of the lease and would not be contradictory of the provision. In our opinion the testimony was





properly excluded. To render it admissible it would be necessary to show that the covenant in the lease imposing the duty on the plaintiff to repair the roof was ambiguous. But the meaning of the covenant is plain and unambiguous. The language of the covenant requires no explanation or construction. "The law is too well established by the authorities to admit of argument that an executory contract under seal, when its terms are clear and unambiguous, can not be varied, contradicted or modified by parol evidence of conversations or by parol agreements, oral or written, made prior to or contemporaneous with, or subsequent to its making in an action at law to enforce its provisions." McKinney v. Sulvey Mfg. Co., 187 Ill. App., 339, 344.

For the reasons stated the judgment of the trial court is affirmed.

**AFFIRMED.**

Matchett, F. J., and McSurely, J., concur.





3925

JACOB L. SCHWARTZ, doing business  
as SCHWARTZ & SCHWARTZ,  
Appellee.

vs.

CHARLES KUNSCH and MARIE KUNSCH,  
Appellants.

APPEAL FROM MUNICIPAL  
COURT OF CHICAGO.

234 I.A. 649

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendants, Charles Kunsch and Marie Kunsch, husband and wife, from a joint judgment in an action of assumpsit brought by the plaintiff, Jacob J. Schwartz, doing business under the name of Schwartz and Schwartz, to recover real estate commissions. The statement of claim alleged a joint liability against the defendants on a written agreement. The case was tried before a jury, and the verdict of the jury found the issues jointly against the defendants. Judgment was entered on the verdict jointly against the defendants. In the view that we take of the case it will be unnecessary to state or discuss the evidence in detail. The written agreement on which the action was brought is an "exclusive sales contract," authorizing the plaintiff to sell certain property owned by the defendants. The plaintiff contends that he procured a purchaser ready, able and willing to buy the property. The agreement was signed by Marie Kunsch but was not signed by Charles Kunsch. It is obvious that since the agreement was not signed by Charles Kunsch, ordinarily he could not be held liable on the agreement. But counsel for the plaintiff maintains that the facts show a "ratification by Charles Kunsch of the agreement." The facts which counsel for the plaintiff relies on, as stated by counsel, are as follows:

"The defendants are husband and wife; the statement



1891 - 1892

THE STATE OF NEW YORK,  
COUNTY OF ALBANY,  
ss.

Attest:

CLERK OF THE COUNTY OF ALBANY,  
Albany.

NOTARY PUBLIC IN AND FOR  
THE COUNTY OF ALBANY.

2311.1.648

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_

known to me to be the person whose name is subscribed to the foregoing instrument, acknowledged to me that he executed the same for the purposes and consideration therein expressed. My commission expires \_\_\_\_\_.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of my office at Albany, New York, this \_\_\_\_\_ day of \_\_\_\_\_, 1891.

Notary Public in and for the County of Albany.

of claim alleges ownership of the property in the defendants and this is not denied by the defendants neither in their affidavit of merits nor in their testimony and is therefore admitted. The agency contract was signed by Mrs. Kunsch August 5, 1932, and on that same day she informed her husband that she had signed, which is admitted by Charles Kunsch; that Charles Kunsch knew that plaintiff was, and permitted him to advertise and to show the property without any objection on his part or notification to plaintiff that he would not be bound by the act of his co-owner in signing the agency agreement; that neither Charles Kunsch nor Marie Kunsch objected to conveying of property because plaintiff was not authorized to procure a purchaser therefor for them but based their refusal to convey on the sole ground, as claimed by them, that the offer of purchase submitted by plaintiff comprehended \$2,000 cash only and not \$6,000 and this testimony is contrary to that of the plaintiff and his brother and the purchaser himself."

In our opinion the facts relied on by counsel for the plaintiff as showing a "ratification" of the written agreement are not sufficient to support the contention of counsel. Whether another and different proceeding could be maintained against Charles Kunsch on the facts stated by counsel for the plaintiff is a question with which we are not concerned. We are clearly of the opinion, however, that an action at law cannot be maintained against Charles Kunsch on the written agreement. Granting all of the above facts alleged by counsel for the plaintiff to be true, yet they do not, as a matter of law, establish the proposition that Charles Kunsch "ratified" or acquiesced in the contract so as to be bound by it even though he did not sign it. We recognize the general rule that a signature to a contract is not always essential to the binding force of an agreement; that the



[illegible][illegible]

object of a signature is to show mutuality or assent, but that these facts may be shown in other ways; that unless a contract is required by statute to be signed, a contract need not be signed if it is accepted and acted on. 13 Corpus Juris, sec. 126, p. 305. The case at bar, however, does not come within the rule. There has been no mutuality of assent between the plaintiff and Charles Kunsch. There is no evidence that the plaintiff knew Charles Kunsch was connected with the transaction at the time the contract was signed by Marie Kunsch. The only testimony in respect of what Marie Kunsch said in regard to her authority to sell the property is the testimony of Martin Schwartz, brother of the plaintiff, who testified on behalf of the plaintiff that Marie Kunsch said she had "the full right to sell; it was entirely up to her to decide on selling the property; it was her property." On this testimony of Martin Schwartz it is clear that the plaintiff could not consider Charles Kunsch a proper or necessary party to the transaction, since Charles Kunsch's wife had stated that she owned the property. But aside from this, it appears from the evidence that so far as the plaintiff was aware, Charles Kunsch was a stranger to the transaction of negotiating the written agreement. Moreover, Charles Kunsch's name does not appear in the body of the contract; and the only circumstance from which it could be inferred from the contract that there was another party interested in the transaction with Marie Kunsch is that the phraseology of the covenants of the contract to be performed by Marie Kunsch are in the plural. Since the action is a joint one against Marie Kunsch and Charles Kunsch, and since the judgment is also a joint judgment, and since there is no evidence showing a joint liability, we are of the opinion that the judgment was erroneous. Imperial Hotel Co. v. Claflin Co., 175 Ill., 116, 123, 124; Kingsland et al. v. Messner et al., 137 Ill. 344, 348; Gould v. Sternburg, Admx., 69 Ill., 531, 532; International





Packing Co. v. Tong, 163 Ill. App. 343, 354; Kanton v. Haas, 183 Ill. App. 57, 58; Leistake v. Smith, 190 Ill. App. 313, 315.

Counsel for the plaintiff contends that the defendants cannot raise the question of non-joint liability because the defendants did not plead non-joint liability. A plea putting in issue the question of joint liability was not necessary. Imperial Hotel Co. v. Claflin Co., *supra*; International Packing Co. v. Tong, *supra*.

Counsel for the plaintiff further contends that the defendants have failed to save for review the question whether there is a joint liability, because the defendants did not make a motion at the close of all of the evidence to have the jury directed by the court to find a verdict for Charles Kunsch. In support of their contention counsel cite the case of Ferrero v. Knights of Security, 309 Ill., 476, 479. Such a motion was not necessary to preserve the question for review.

In the case of Ferrero v. Knights of Security, *supra*, the question under consideration by the court was whether the trial court erred in refusing to give an instruction at the close of plaintiff's evidence, to find the issues for the defendant. The court held that by introducing evidence after the refusal of the instruction and not renewing the request for a directed verdict at the close of all of the evidence, the defendant waived any error that may have been committed. The question in the case at bar is not whether there should have been a directed verdict for the defendant Charles Kunsch, but whether there is sufficient evidence to support the allegation of joint liability in the plaintiff's statement of claim. The question of joint liability is preserved for review by the motion in arrest of judgment (Bershoff Brewing Co. v. Prabylski, 82 Ill. App. 361) and also by the motion for a new trial.

The record shows that a motion for a new trial was made, but the record does not show that the motion was in writing or that





the grounds of the motion were specifically stated. In such case the plaintiff had the right to move for a rule on the defendants to specify the grounds of the motion for a new trial. The Ottawa, Oswego & Fox River Valley R. R. Co. v. McMath, 91 Ill., 104, 111; The Metropolitan West Side Elevated R. R. Co. v. White, 106 Ill. 375, 378. The plaintiff did not make such a motion and therefore he cannot now object on appeal that the motion for a new trial was not in writing or that the grounds were not specifically stated. The Chicago Union Traction Company v. City of Chicago, 209 Ill., 444, 445. In this state of the record the defendants are entitled to assign as error any error that may appear in the record. Harber v. Chicago & Alton Ry. Co., 235 Ill., 500, 502; People v. Melnick, 263 Ill., 34, 31.

Counsel for the plaintiff contends that any defect in the statement of claim was cured by the verdict of the jury. The question we have considered does not relate to a defect in the statement of claim, but to the sufficiency of the evidence.

Independently of the question whether the evidence fails to show that there is a joint liability, we are of the opinion that the evidence does not support the cause of action alleged in the statement of claim as to either Marie Kunsch or Charles Kunsch. The plaintiff alleges that the defendants entered into a written agreement with the plaintiff, a copy of which is attached to and made a part of the statement of claim; and that "there is due and owing to him from the defendants the sum of \$1500 in money under said agreement." The agreement provides that the plaintiff "shall have and retain from the proceeds arising from" the sale of the property "he \_\_\_\_\_ as commission." In other words, according to the actual terms of the written agreement, the plaintiff was not to have any commission. If there was any agreement in regard to the plaintiff's commission, such agreement was independent of the written agreement. According to the





plaintiff's contention there was a parol agreement covering the plaintiff's commission. The evidence for the plaintiff was that the defendant, Marie Knaush, said, "I will be satisfied if I get \$20,000 out of it." The evidence for the plaintiff further showed that the plaintiff had a purchaser ready, able and willing to buy the property for \$21,500. The commission which the plaintiff claims is due to him is \$1500, the excess over the \$20,000. There is no positive affirmative evidence of an agreement for any fixed commission. Inferentially the plaintiff was to get nothing as a commission unless he found a purchaser who would give more than \$20,000 for the property. The testimony for the defendants is contradictory of the testimony for the plaintiff on material issues, but it is not necessary to consider any evidence in the case further than to show that the evidence does not support the allegations of the statement of claim that there is due and owing to the plaintiff from the defendants the sum of \$1500 on the written agreement. If there is any amount due and owing to the plaintiff as a commission, such amount is based entirely on a parol agreement and not on the written agreement. Even if it should be contended that the evidence shows that the contract was partly oral and partly written, nevertheless such a contract is, in legal effect, an oral contract. Conductors' Benefit Association v. Leasia, 142 Ill. 560, 567; Rittenhouse & Ambree Co. v. Barry, 98 Ill. App. 542, 554; Murphy v. Cicero Lumber Co., 97 Ill. App. 510, 513.

Counsel for the plaintiff states that the "agency agreement is silent \* \* \* as to any compensation to be paid to the broker for his services," and that on this question "parol testimony was offered by both plaintiff and defendants." The agreement is not silent in regard to the commission of the plaintiff, but literally provides that there shall be no commission. As we have previously stated, the evidence relating to the commission of the





plaintiff shows that the agreement, if any, on the part of the defendants to pay a commission to the plaintiff was an oral agreement and not a written one. The statement of claim, as we have pointed out, expressly alleges that "there is due and owing to the plaintiff from the defendants the sum of \$1800 in money under" a written agreement. Since the evidence fails to show that there was a written agreement providing for the commission of the plaintiff, there is, therefore, no evidence to sustain the verdict of the jury. The question arising on the record, although technically a variance, is also a question whether there is a total lack of evidence to sustain the cause of action alleged in the plaintiff's statement of claim.

For the reasons stated the judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

Hatchett, P. J., and McCurely, J., concur.





3926a

GEORGE CRANAUKIS and  
JACOB CRANAUKIS,  
Appellees.

vs.

APPEAL FROM  
COUNTY COURT,  
COOK COUNTY.

MATT PARTL, ELIZABETH  
PARTL, his wife, and  
PINKERT STATE BANK,  
Appellants.

234 I.A. 649

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an appeal by the defendant, the Pinkert State Bank, from a judgment in the County Court of Cook County, in an action brought by the plaintiffs, George Cranaukis and Jacob Cranaukis, to recover \$1000 deposited with the defendant as "earnest money" under a contract to purchase real estate, between the plaintiffs and Matt Partl and his wife, Elizabeth Partl. The case was tried before a jury; and the jury returned a verdict against the defendant, the Pinkert State Bank, only. The declaration of the plaintiffs consisted of the common counts, but the plaintiffs also filed a bill of particulars. The substance of the bill of particulars is as follows: That on July 29, 1921, the plaintiffs executed a contract with Matt Partl and Elizabeth Partl whereby the plaintiffs agreed to buy, and Matt Partl and Elizabeth Partl agreed to sell certain real estate and personal property located in Cicero, Illinois, for the consideration of \$21,000, payable as follows, \$1,000 as earnest money, \$4,000 on delivery of deed and purchaser to assume first mortgage of \$6,000, second mortgage for \$5,200, balance to be secured to vendors by purchase money mortgage. That plaintiffs deposited the earnest money of \$1,000 with the defendant, Pinkert State Bank, as provided in said



ALL INFORMATION CONTAINED  
HEREIN IS UNCLASSIFIED  
DATE 08-01-2010 BY 60322

44

STUDYING, I HAVE BEEN  
 WITH THE NEW YORK  
 PUBLIC LIBRARY, ASTOR LENOX  
 TILDEN FOUNDATION

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED

Wilt is a novel by the historian, the younger son

These three hypotheses are tested in the following sections.

© 2000 Blackwell Science Ltd, *Journal of Internal Medicine* 247: 395–401

Available to persons with appropriate clearance only

Accepted for publication 12 November 2003

... ..

...and the ...

... ..

1968-1969, 1970-1971, 1972-1973, 1974-1975, 1976-1977, 1978-1979, 1980-1981, 1982-1983, 1984-1985, 1986-1987, 1988-1989, 1990-1991, 1992-1993, 1994-1995, 1996-1997, 1998-1999, 2000-2001, 2002-2003, 2004-2005, 2006-2007, 2008-2009, 2010-2011, 2012-2013, 2014-2015, 2016-2017, 2018-2019, 2020-2021, 2022-2023, 2024-2025, 2026-2027, 2028-2029, 2030-2031, 2032-2033, 2034-2035, 2036-2037, 2038-2039, 2040-2041, 2042-2043, 2044-2045, 2046-2047, 2048-2049, 2050-2051, 2052-2053, 2054-2055, 2056-2057, 2058-2059, 2060-2061, 2062-2063, 2064-2065, 2066-2067, 2068-2069, 2070-2071, 2072-2073, 2074-2075, 2076-2077, 2078-2079, 2080-2081, 2082-2083, 2084-2085, 2086-2087, 2088-2089, 2090-2091, 2092-2093, 2094-2095, 2096-2097, 2098-2099, 2100-2101, 2102-2103, 2104-2105, 2106-2107, 2108-2109, 2110-2111, 2112-2113, 2114-2115, 2116-2117, 2118-2119, 2120-2121, 2122-2123, 2124-2125, 2126-2127, 2128-2129, 2130-2131, 2132-2133, 2134-2135, 2136-2137, 2138-2139, 2140-2141, 2142-2143, 2144-2145, 2146-2147, 2148-2149, 2150-2151, 2152-2153, 2154-2155, 2156-2157, 2158-2159, 2160-2161, 2162-2163, 2164-2165, 2166-2167, 2168-2169, 2170-2171, 2172-2173, 2174-2175, 2176-2177, 2178-2179, 2180-2181, 2182-2183, 2184-2185, 2186-2187, 2188-2189, 2190-2191, 2192-2193, 2194-2195, 2196-2197, 2198-2199, 2200-2201, 2202-2203, 2204-2205, 2206-2207, 2208-2209, 2210-2211, 2212-2213, 2214-2215, 2216-2217, 2218-2219, 2220-2221, 2222-2223, 2224-2225, 2226-2227, 2228-2229, 2230-2231, 2232-2233, 2234-2235, 2236-2237, 2238-2239, 2240-2241, 2242-2243, 2244-2245, 2246-2247, 2248-2249, 2250-2251, 2252-2253, 2254-2255, 2256-2257, 2258-2259, 2260-2261, 2262-2263, 2264-2265, 2266-2267, 2268-2269, 2270-2271, 2272-2273, 2274-2275, 2276-2277, 2278-2279, 2280-2281, 2282-2283, 2284-2285, 2286-2287, 2288-2289, 2290-2291, 2292-2293, 2294-2295, 2296-2297, 2298-2299, 2300-2301, 2302-2303, 2304-2305, 2306-2307, 2308-2309, 2310-2311, 2312-2313, 2314-2315, 2316-2317, 2318-2319, 2320-2321, 2322-2323, 2324-2325, 2326-2327, 2328-2329, 2330-2331, 2332-2333, 2334-2335, 2336-2337, 2338-2339, 2340-2341, 2342-2343, 2344-2345, 2346-2347, 2348-2349, 2350-2351, 2352-2353, 2354-2355, 2356-2357, 2358-2359, 2360-2361, 2362-2363, 2364-2365, 2366-2367, 2368-2369, 2370-2371, 2372-2373, 2374-2375, 2376-2377, 2378-2379, 2380-2381, 2382-2383, 2384-2385, 2386-2387, 2388-2389, 2390-2391, 2392-2393, 2394-2395, 2396-2397, 2398-2399, 2400-2401, 2402-2403, 2404-2405, 2406-2407, 2408-2409, 2410-2411, 2412-2413, 2414-2415, 2416-2417, 2418-2419, 2420-2421, 2422-2423, 2424-2425, 2426-2427, 2428-2429, 2430-2431, 2432-2433, 2434-2435, 2436-2437, 2438-2439, 2440-2441, 2442-2443, 2444-2445, 2446-2447, 2448-2449, 2450-2451, 2452-2453, 2454-2455, 2456-2457, 2458-2459, 2460-2461, 2462-2463, 2464-2465, 2466-2467, 2468-2469, 2470-2471, 2472-2473, 2474-2475, 2476-2477, 2478-2479, 2480-2481, 2482-2483, 2484-2485, 2486-2487, 2488-2489, 2490-2491, 2492-2493, 2494-2495, 2496-2497, 2498-2499, 2500-2501, 2502-2503, 2504-2505, 2506-2507, 2508-2509, 2510-2511, 2512-2513, 2514-2515, 2516-2517, 2518-2519, 2520-2521, 2522-2523, 2524-2525, 2526-2527, 2528-2529, 2530-2531, 2532-2533, 2534-2535, 2536-2537, 2538-2539, 2540-2541, 2542-2543, 2544-2545, 2546-2547, 2548-2549, 2550-2551, 2552-2553, 2554-2555, 2556-2557, 2558-2559, 2560-2561, 2562-2563, 2564-2565, 2566-2567, 2568-2569, 2570-2571, 2572-2573, 2574-2575, 2576-2577, 2578-2579, 2580-2581, 2582-2583, 2584-2585, 2586-2587, 2588-2589, 2590-2591, 2592-2593, 2594-2595, 2596-2597, 2598-2599, 2600-2601, 2602-2603, 2604-2605, 2606-2607, 2608-2609, 2610-2611, 2612-2613, 2614-2615, 2616-2617, 2618-2619, 2620-2621, 2622-2623, 2624-2625, 2626-2627, 2628-2629, 2630-2631, 2632-2633, 2634-2635, 2636-2637, 2638-2639, 2640-2641, 2642-2643, 2644-2645, 2646-2647, 2648-2649, 2650-2651, 2652-2653, 2654-2655, 2656-2657, 2658-2659, 2660-2661, 2662-2663, 2664-2665, 2666-2667, 2668-2669, 2670-2671, 2672-2673, 2674-2675, 2676-2677, 2678-2679, 2680-2681, 2682-2683, 2684-2685, 2686-2687, 2688-2689, 2690-2691, 2692-2693, 2694-2695, 2696-2697, 2698-2699, 2700-2701, 2702-2703, 2704-2705, 2706-2707, 2708-2709, 2710-2711, 27

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the results of its investigation of the activities of the American Friends Service Committee in the Philippines.

[illegible]

SECRET - INFORMATION IS NOT TO BE RELEASED OUTSIDE THE AGENCY

Approved: \_\_\_\_\_ Date: \_\_\_\_\_

Witness Kenneth Lee, 1040 East Atlantic Street, Miami, Fla.

[illegible]

1941-1942 and 1943-1944, 1945-1946 and 1947-1948, 1949-1950 and 1951-1952

Images 1001-1010 in sequence from the series of recordings are used to

Copyright 1997 by John Wiley & Sons, Inc.

On your return all business officials will receive your

contract. That plaintiffs have at all times been ready, able and willing to comply with the terms of said contract, but that the defendants have not performed nor offered to comply with the contract, although often requested. And that the defendants have not returned nor offered to return the earnest money deposited by the plaintiffs, although often requested to do so.

The defendant filed a special plea alleging that the defendants offered and were ready and willing to comply with the terms of the contract, but the plaintiffs refused to carry out the contract. The defendants also filed an affidavit of merits which contained in substance the following averments: That the defendants admit that a contract was entered into for the purchase of the premises known as No. 2512 South 48th Avenue, Cicero, for \$21,000; that at the time of making of the contract the plaintiffs deposited the sum of \$1,000 as earnest money with the defendant, the Pinkert State Bank; that the further sum of \$10,000 was to be paid within five days after the title had been examined and found good; and that the balance of the purchase price was to be assumed by the plaintiff in the nature of mortgages then existing on said real estate. That the defendants had the abstract brought down to date; that the plaintiffs had their attorney examine the abstract; and that the title was found good and accepted by the plaintiffs; that thereupon defendants asked the plaintiffs to carry out the contract but they refused; that the defendants caused a notice to be served on the plaintiffs that if they did not perform the contract within 5 days, the \$1,000 earnest money would be forfeited; that the plaintiffs did not perform their contract within five days after the receipt of the notice; that thereupon the defendants declared the earnest money forfeited in accordance with the terms of the contract; that by reason thereof the defendants were entitled to receive the \$1000 "earnest money" and to



...that the plaintiff has at all times been ready, able  
and willing to comply with the terms of said contract, but that  
the defendant has not performed and refused to comply with  
the contract, although often requested. And that the defendant  
has not returned any offers to return the amount money deposited  
by the plaintiff, although often requested to do so.

The plaintiff filed a request for judgment and the  
defendant refused and was ready and willing to comply with the  
terms of the contract, but the plaintiff refused to comply with  
the contract. The defendant also filed an affidavit in which  
which contained in substance the following statement: That the  
defendant would not accept a judgment and return into the court  
amount of the judgment known as No. 1234567890 amount, \$1000,  
for which, that at the time of making of the contract the plain-  
tiff deposited the sum of \$1,000 in currency with the plain-  
tiff, the plaintiff being ready and willing to pay the sum of \$1,000  
to the plaintiff within five days after the filing of said judgment and  
that plaintiff was ready and willing to pay the sum of \$1,000  
within five days after the filing of said judgment and that the  
plaintiff by the plaintiff in the contract to return the money  
to the plaintiff. That the defendant has the money deposited  
and is ready that the plaintiff has often requested the  
plaintiff and that the plaintiff was ready and willing to pay  
the plaintiff that plaintiff defendant asked the plaintiff to  
pay the defendant but they refused. That the defendant would  
be willing to be served on the plaintiff and if they did not  
take the money within 5 days, the \$1,000 amount money would be  
forfeited that the plaintiff did not return the money  
within five days after the receipt of the money and therefore  
the defendant desires the court to award the plaintiff the money  
and the terms of the contract and the money should be paid.

apply it on expenses incurred, including broker's commissions, as provided in said contract; that by reason of plaintiffs' refusal to perform the contract the rights of the plaintiffs became forfeited by the terms of the contract.

Counsel for the defendant the Pinkert State Bank contend that since "the plaintiffs filed no special counts but relied wholly upon the common counts," the plaintiffs cannot recover because "the contract is executory and has not been rescinded by mutual consent." Although the plaintiffs filed no special count they filed a bill of particulars which alleged a special contract. When a bill of particulars is furnished it is deemed a part of the declaration and is construed in the same way as though the bill of particulars originally had been incorporated in the declaration. McDonald v. The People, 126 Ill., 150, 160, 161; O'Leary v. The People, 88 Ill. App., 60, 64, 65. The action of the plaintiffs, therefore, does not rest "wholly upon the common counts," as counsel for the defendants contend. In the bill of particulars it is alleged that the plaintiffs were ready, able and willing to comply with the terms of the contract, but that the defendants, although requested, refused to carry out the contract.

It is further contended by counsel for the defendant the Pinkert State Bank that the Bank was not a party to the contract between the plaintiffs and the Parile, but was merely a stakeholder; and that, therefore, the plaintiffs cannot recover in an action in assumpsit against the defendant the Pinkert State Bank. It is not necessary in order to maintain an action against a stakeholder that he should be a party to the contract existing between the parties for whom he holds money. A stakeholder is a mere depository of both parties, with a naked authority to deliver over the money on the proposed contingency, and is not a party to the contract. Doney v. Miller, 2 Ill. App., 30, 32; McLean v.



...the fact that the ...

RECEIVED THE FOLLOWING INFORMATION FROM THE BUREAU OF THE  
INTERNAL SECURITY DIVISION OF THE FBI ON APRIL 1, 1954:

1. The first part of the report is a description of the situation in the country at the time of the survey. It includes a description of the country's geography, climate, and population. It also includes a description of the country's political and economic situation.

...the bill of exchange was not cashed at the bank of the ...

1. The following information was obtained from the records of the Department of the Interior, Bureau of Land Management, regarding the land owned by the United States in the State of Nevada:

1. The first of these is the fact that the Commission has not yet received any information from the Government of the United States regarding the activities of the Committee for the Liberation of the People of the East (CLPE) in the United States.

It is further suggested by counsel for the defendant

1. The first part of the report, which is the most important, is the description of the situation in the country. This part is divided into two sections: the first section describes the situation in the country as a whole, and the second section describes the situation in the various regions of the country.

...the fact that the ...

with the money on the proposed acquisition, and in any event, it

Wilson, 36 Ill. App. 687, 688. An action against the stakeholder does not arise on the contract between the parties. The action against the stakeholder rests on an implied promise of the stakeholder to pay the money to the party to whom it may lawfully belong. The general rule is that assumpsit for money had and received will always lie whenever one person has received money which belongs to another, and which, in justice and right, should be returned. Wilson v. Turner, 164 Ill., 398. In our opinion the action of assumpsit for money had and received in the case at bar comes within the rule. The principle on which the right to maintain the action of assumpsit for money had and received is based has been held to justify an action of assumpsit to recover from a corporation money received under an ultra vires contract. Leish v. American Brake Beam Co., 305 Ill., 147. Such a case is analogous in principle to the case at bar. In the case of Leish v. American Brake Beam Co., supra, the court quoted (p. 153) with approval the following language from the case of Central Transportation Co. v. Fullman Palace Car Co., 139 U. S. 24: "The action is not maintained upon the unlawful contract nor according to its terms, but on an implied contract of the defendant to return, or, failing to do that, to make compensation for property or money which it has no right to retain. To maintain such an action is not to affirm, but to disaffirm, the unlawful contract." The recovery in this case was for moneys had and received by the defendant for the use of the plaintiff, and this action will lie whenever one person has received money which in justice and right belongs to another and which should be returned. It is an equitable action to recover back money which the defendant ought to refund."

The action of assumpsit for money had and received has been held to be a proper action in which to recover money deposited with a stakeholder upon a wager on a race, where the race was not run and demand was made on the stakeholder for the return of the





money. Paraelae v. Rogers, 36 Ill., 56, 61.

The principal ground on which counsel for the defendant the Pinkert State Bank rely for reversal is that the verdict of the jury is manifestly against the weight of the evidence. Counsel for the defendant maintain that the evidence clearly shows that no such contract as the one set up in the plaintiffs' bill of particulars was ever executed; that the only contract that was entered into was the contract which is signed by the Partls and the plaintiff, George Cranaukie, and which is designated as "Partl's Exhibit 2 for identification." This contract was offered in evidence by the defendants, but was excluded by the court. The main difference between the contract which the plaintiffs allege was executed, and the one which the defendants maintain was executed, is the amount of the cash that was to be paid additional to the \$1,000 "earnest money." The plaintiffs contend that the amount was \$4,000 and the defendants contend that it was \$10,000. The question to be determined on the evidence is whether any such contract as the one relied on by the plaintiffs was, in fact, ever executed. The only testimony that there was such a contract is the testimony of the two plaintiffs. Opposed to their testimony is the testimony of six witnesses on behalf of the defendants, whose testimony clearly shows that no such contract was ever executed, but that the only contract that was executed was the contract identified as "Partl's Exhibit 2." On the trial counsel for the plaintiffs called on counsel for the defendants to produce the contract alleged in the plaintiffs' bill of particulars to have been executed. Demand for the production of the contract apparently had been duly made by the plaintiffs in a notice served on the defendants. Counsel for the defendants admitted receiving a notice to produce the contract, but stated that no such contract was ever executed. The court then permitted parol testimony to be introduced by the plaintiffs to show the terms of the contract.



... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

Jacob Granaukis, one of the plaintiffs, testified substantially as follows: That he met the Partls on July 21, 1921, at his brother's place; that he was buying the Partls' building and the restaurant in the building; that the price was \$21,000; that he and his brother signed a contract; that he, the witness, doesn't know whether the Partls signed it or not; that he doesn't remember; that he supposes they signed it; that he saw the contract the same day "we" signed it; that he hasn't seen it since; that he signed only one contract and that was signed at the Pinkert State Bank in July, 1921; that those present were he, his brother, Partl and his wife, and Henry Miskelly, who was connected with the real estate department of the Pinkert State Bank; that the contract provided for a total payment of \$21,000, \$5,000 in cash, and the balance of \$16,000 in monthly payments of \$300 each; that \$1,000 was paid to the bank and \$4,000 more was to be paid "after three days or four, maybe next day;" that he paid \$500 of the \$1000 and his brother George also paid \$500; that his, the witness', lawyer was Otto V. Klenha; that Klenha handled the deal; that Klenha was present when he, the witness, signed the contract which the plaintiffs contend was the only one signed; that the Monday after the Friday on which the contract was signed he, the witness, went with Klenha with the cash to pay the balance; that he did not read the contract he signed; that he did not see it; that he left everything to Klenha; that he went to see the owner, Partl and his wife, twenty times; that they, Partl and his wife, said "Go to the bank;" that he, the witness, went to the bank and saw "this gentleman," (indicating some one but the record does not show whom); that the "same fellow" and some other fellow" says, "You got to pay \$11,000;" that he went to the bank a thousand times, sometimes five times a day; that "we" had \$5,000 in cash and carried it to the bank a thousand times. He later testified that the \$5,000 was in checks.

George Granaukis, one of the plaintiffs, testified that



[illegible]

he met the Partls in July, 1921; that they wanted \$21,000 for their property; that Partl told him \$5,000 should be in cash and the rest on time; that he, the witness, signed the contract with his brother; that after he signed the contract he went with his brother to the bank; that Partl was there and said "that man" wants \$11,000; that he, the witness, said, "I can't get that much money. I got \$5,000 cash;" that he, the witness, asked "him" to give the money back; that "they" never returned any of the \$1,000; that he and his brother paid the \$1,000; that Otto V. Klenha was with him when he signed "some paper;" that he did not read it; that he banked at the Finkert State Bank; that Partl gave him a "piece of paper" which he gave to his lawyers.

Otto V. Klenha testified on behalf of the defendants in substance that he was the man the plaintiffs referred to as Klenha, who went with George Cranaukis, one of the plaintiffs, to the Finkert State Bank to make the contract; that at the Bank they met Henry Miskelly, who was connected with H. Finkert & Sons, the real estate department of the bank; that the contract was drawn up by Miskelly the day after they were there; that the "Partl Exhibit 2 for Identification" is the contract that was signed; that that was the only contract signed that he, the witness, knows of; that then the four of them went to Partl's place of business and Mrs. Partl signed the contract; that he, the witness, told George Cranaukis the contents of the contract; told him that there was a deposit of \$1,000, a first mortgage of \$5,000 to be assumed, a second mortgage of \$5,000 to be paid by monthly payments and \$10,000 in cash; that George Cranaukis said that he could get the money; that the contract was signed July 30, 1921; that no contract was signed on the 29th, but that George Cranaukis and Jacob Cranaukis were at the bank at that time; that the next day George Cranaukis and the witness went to the Bank and "this contract" was signed and it was the only con-





tract that was signed.

Joseph C. Klenha, on behalf of the defendants testified in substance that he is a lawyer and that at the request of George Cranaukis he examined the abstract of title of the property; that he rendered an opinion; that to his knowledge the deal was never closed; that George Cranaukis did not have the money; that he made efforts to raise the money; that he, the witness, saw the contract, "Partl's Exhibit 2 for Identification," at the Pinkert State Bank some time in the year 1931; that he does not believe it was signed by all the parties mentioned in the body of the contract; that after the contract was signed he was at the bank with George Cranaukis and that they talked with Albert Pinkert, Jr.; that the substance of the conversation was this: That George Cranaukis did not have money enough to consummate the deal, and that he sought ways and means to raise the money; that "we" endeavored to get the bank to help to finance it and that they could not see their way clear to do it; that Pinkert, Jr., told Cranaukis he would have to get his money elsewhere; that "Partl's Exhibit 2 for Identification" is the contract that he, the witness, had with him at the time; that George Cranaukis was there, and that he believes that George Cranaukis' brother was there at the time; that to his, the witness', knowledge neither George nor his brother stated that it was an incorrect contract; that they never stated to him, the witness, that they had signed another contract; that to his, the witness', knowledge he never heard them state they signed a contract whereby they would pay \$4,000 additional.

Henry Wiskelly, a real estate broker connected with B. Pinkert & Sons, the real estate department of the bank, on behalf of the defendants testified substantially as follows: That the plaintiffs, George and Jacob Cranaukis, asked him to draw the contract; that on July 29, 1931, Otto W. Alenka came to the bank with either





George or Jacob Cranaukis and Partl; that they said they had made a deal between themselves for \$21,000 for the property; that he, the witness, took pencil notes of all of the terms of the deal; that he told them it would take some time to prepare the contract and that they had better come together the next day; that "they" put up \$1000 deposit; that the terms of the contract were \$1000 to be paid as earnest money to be applied on the purchase when consummated, and two mortgages to be assumed, one of \$5,000 and a second of \$4,000, and the balance of approximately \$10,000 was to be paid in cash; that Otto V. Klenha talked to "Mr. Cranaukis" and Partl and told him, the witness, "just what to put in the contract, that is to say, as the contract is written;" that the contract was signed the next morning by George Cranaukis and Partl; that George Cranaukis, Partl, Klenha and the witness went to the restaurant of Partl and had Mrs. Partl sign the contract; that the contract is "Partl's Exhibit 2 for Identification;" that no other contract was signed in the presence of the witness, and that he did not draw any other; that after the contract was signed he, the witness, procured the abstract and delivered it to Joseph C. Klenha on the instructions of "Mr. Cranaukis;" that neither of the Cranaukis brothers spoke to him about any other contract; that they never said anything to him about a \$1000 deposit and \$4,000 in cash additional to be paid at the close of the deal; that he never heard about such an agreement; that neither George nor Jacob Cranaukis ever signed any other papers in his presence than those that have been shown here for this Partl property; that on July 30, when the contract was signed, he, the witness, asked George Cranaukis, "Where is Jacob?" that George said, "That does not make any difference; I am buying the property. Jacob does not have to be here;" that they tried to close the deal with \$4,000 but that was not enough; that about September 21 there was a conversation in reference to "Cranaukis'" inability to raise the cash to close the





deal; that about 30 days after the contract was signed he, the witness, sent "them" a five days notice according to the terms of the contract, that if "they" did not comply with the terms they would forfeit the deposit.

Fenton Mangum, on behalf of the defendants testified, in substance, that he was a salesman for H. Finkert & Sons; that George Cranaukis came to the real estate department of the Finkert State Bank and asked him, the witness, if he had property for sale right close to Western avenue; that he submitted the Partl property to him; that he, the witness, took George Cranaukis to see the property and that George Cranaukis agreed to purchase it; that he told George Cranaukis that the purchase price was \$21,000; that there was a \$5,000 first mortgage, a \$4,500 second mortgage, and that \$11,000 cash would be required; that on July 29, 1921, George and Jacob Cranaukis and Partl and Otto V. Klenha came over to the bank and Miskelly gave them a receipt for the deposit that was put up by the Cranaukis brothers; that he believes that Miskelly drew the contract; that he, the witness, was not present when the contract was signed; that some time in August he asked "Cranaukis" when he was going to close the deal; that Cranaukis said there was some trouble in regard to getting money; that he, the witness, told "Cranaukis" that a man by the name of Schledowski had made him, the witness, an offer of \$22,000 for the property; that "Cranaukis" told him, the witness, that he could not sell the property for less than \$26,000.

Partl, on behalf of the defendants, testified substantially that "Mr. Klenha" brought George Cranaukis to him about July 29, 1921; that on July 29, George Cranaukis, "Mr. Klenha" and the witness went to the bank and met Miskelly; that Jacob Cranaukis was there; that Miskelly drew the contract; that on July 30 he, his wife and George Cranaukis signed the contract identified as Partl's Exhibit 2; that that contract was the only one that was signed; that





after the contract was signed he had a talk with George Cranaukis, in which he told George Cranaukis that he, the witness, had another buyer, and that he, the witness, offered George Cranaukis \$1000 "profit" to "release his contract;" that Miskelly was present at the time; that after waiting 60 days, he, the witness, on September 27, 1931, served a five days notice on George and Jacob Cranaukis.

Elizabeth Partl, wife of Matt Partl, on behalf of the defendants testified that she signed the contract Partl's Exhibit 1 for Identification. "Q. Did you sign any other papers than those I showed you? A. I signed what you showed me."

From a consideration of the evidence we are of the opinion that the plaintiffs have not established by a preponderance of the evidence that the contract which they have sued on, and which they contend was the only contract executed, was in fact executed. We think that the evidence clearly shows that the contract, identified as "Partl's Exhibit 2" and offered in evidence by the defendants, was the contract which was really executed. The testimony of all of the witnesses for the defendants, with the exception of Mrs. Partl, is given with a circumstantial detail that is convincing. The testimony of the plaintiffs on the other hand is not satisfactory. Even Otto V. Klonka, who the plaintiffs testified represented them in the negotiations at the bank, stated positively that the contract identified as "Partl's Exhibit 2 for Identification" was the only contract that was executed. The plaintiffs testified that the contract which they signed was another and different contract. The evidence shows, however, that George Cranaukis in fact signed the contract identified as Partl's Exhibit 2 for Identification." If he signed another contract besides that one, then instead of only one contract being signed by him, as the plaintiffs contend, there were two contracts signed by him. Yet Jacob Cranaukis testified that he, Jacob, signed only





that he saw George sign. George Cranaukis did not explain or account for the fact that his name was signed to the contract identified as "Partl's Exhibit 3 for Identification." Furthermore, the evidence shows that Jacob Cranaukis was only present at the bank on July 30, and that on that date no contract was signed; that the contract identified as "Partl's Exhibit 2," which George Cranaukis signed, was not signed until July 30, and that Jacob Cranaukis was not present at that time. The signature of Jacob Cranaukis does not appear on the contract identified as "Partl's Exhibit 3." George Cranaukis was present, however, on July 30, and his name does appear on the contract identified as "Partl's Exhibit 2." Henry Miskelly testified that he asked George when George signed the contract where Jacob was; and that George replied, "That does not make any difference. I am buying the property. Jacob does not have to be here." If Jacob Cranaukis signed the contract which he testified that he signed, where and when did he sign it and who were present? All of the persons who Jacob Cranaukis testified were present when he signed the contract, with the exception of his brother George, testify that only one contract was signed, and that was the contract identified as "Partl's Exhibit 2." Moreover, Jacob Cranaukis testified that Otto V. Klenha, the lawyer who was representing him, was present when he, Jacob Cranaukis, signed the contract. Yet Otto V. Klenha testified that the only contract which was signed was the one identified as "Partl's Exhibit 2;" and the evidence shows that Jacob Cranaukis did not sign that contract.

We are of the opinion that the verdict of the jury was manifestly against the weight of the evidence.

In discussing the contract identified as "Partl's Exhibit 2," which was excluded by the court, we are not to be understood as treating it as a valid contract, or as expressing any





opinion as to its validity or invalidity. In our view the contract should have been admitted in evidence irrespective of the question whether it was valid or invalid. It was admissible on the ground, not to establish contractual relations between the parties, but to corroborate the testimony of the witnesses for the defendants; and also on the ground that, in view of the conflicting evidence it tended as a collateral fact, even if it were not corroboratory, to render more probable and credible the testimony of the witnesses for the defendants. The witnesses for the defendants testified that only one contract was executed, and they identified a contract as that one. The witnesses for the defendants further testified that \$10,000 in cash in addition to the \$1,000 earnest money was the amount agreed upon, and that the contract which they identified so provided. There was also testimony for the defendants that the terms of the contract were explained to the plaintiffs. That there was such a contract, and that the defendants were able to produce the contract, obviously were important and material evidentiary facts, although the contract itself may have been invalid. By proper instructions the purpose for which the contract is admissible could have been indicated. The general rule is that evidence which tends to corroborate and render probable the testimony of witnesses with respect to any evidentiary fact or circumstance is admissible. The People v. McGinn, 247 Ill., 130, 164, 165; Hamilton v. Hastings, 172 Pa. St. 308, 317; Myre v. Ludwig, 1 Pa. St. 47, 54; Miller v. Pierpont, 57 Conn. 406, 409; Davis v. Farrell, 80 Vt. 166, 174.

There is also a well established analogous rule that "whenever there is a conflict in the evidence relevant to the issue, evidence of collateral facts which have a direct tendency to show that the evidence of one side is more reasonable and, therefore, more credible than that of the opposite side is admissible."





Standard Brewery v. Healy, 309 Ill. App. 373. To the same effect are the following cases: Glassberg v. Olson, 88 Minn. 195, 197; Dodge v. Weill, 158 N. Y. 346, 380; Insurance Company v. Weide, 76 U. S. (11 Wall) 438, 440.

In our opinion the trial court committed reversible error in refusing to admit the contract identified as "Partl's Exhibit 2."

For the reasons stated the judgment is reversed and the cause remanded.

REVERSED AND REMANDED.

Wachett, F. J., and McSurely, J., concur.



President Roosevelt, Mr. Taft, Mr. Wilson, Mr. Coolidge, Mr. Hoover, Mr. Truman, Mr. Eisenhower, Mr. Kennedy, Mr. Johnson, Mr. Nixon, Mr. Ford, Mr. Carter, Mr. Reagan, Mr. Bush, Mr. Clinton, Mr. Obama, Mr. Trump.

On the subject of the trial, the following is stated in the report of the President's Commission on the Assassination of President Kennedy:

"The Commission found that the President was assassinated on November 22, 1963, in Dallas, Texas, by Lee Harvey Oswald."

The Commission also found that the assassination was a premeditated act, and that the assassin was motivated by political reasons. The Commission recommended that the President be buried in Arlington National Cemetery, and that the assassination be commemorated by the establishment of a national day of mourning.

3927a

NIELS BUCK and FRED BUCK,  
doing business as  
Niels Buck & Co.,

Appellees,

vs.

CLAUDE W. MORRIS,

Appellant.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

234 I.A. 649

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

The action in this case was brought by the plaintiffs, Niels Buck and Fred Buck doing business as Niels Buck & Company, to recover the cost of a cement sidewalk which the plaintiffs laid in front of certain lots owned by the defendant at the alleged request of the defendant, Claude W. Morris. The defendant denied that the sidewalks were laid at his request. A jury was waived and the case was heard by the court. The finding of the court was for the plaintiffs, and judgment was entered for the sum of \$289.02. The defendant appealed from the judgment.

In behalf of the plaintiffs the only testimony to the effect that the defendant requested the plaintiffs to lay the sidewalks, was the testimony of Fred Buck, one of the plaintiffs. The testimony of Buck was contradicted by the defendant and his wife.

The testimony of Buck was substantially as follows: That he had known the defendant for 4 or 5 years; that he purchased from the defendant 46 lots; that when he purchased the lots there were no sidewalks in front of them; that in June or July, 1919, while he and the defendant were on the property, they had a conversation about the laying of sidewalks; that the defendant "wanted to know when we run in our walks, to run the walks in front of these lots that were vacant, including the corner; and he wanted to know what the price was we were



Handwritten signature or initials at the top of the page.

THE - 1940

THE - 1940  
THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

2341/1.648

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

THE - 1940  
THE - 1940

having it laid for; and I stated we had not let a contract on it, but would find out and let him know, and we would be more than pleased to run these walks in for him;" that a short time after this conversation, after getting the contract for laying the walks, he, Buck, had a conversation over the telephone with the defendant in which he, Buck, told the defendant the sidewalks would cost 20 cents a square foot and \$1.20 a lineal foot; that the defendant said "that's all right Mr. Buck, to go right ahead and put those sidewalks in;" that thereupon the sidewalks were laid; that after the sidewalks were laid he, Buck, had a conversation with the defendant in regard to some trouble the plaintiffs were having concerning the putting of a water main in the street; that the defendant suggested that if he could get a water main put in the street that "we would call the sidewalks square;" that he, Buck, said that "there was nothing doing;" that a bill for the cost of the sidewalks was sent to the defendant but that he refused to pay the bill; that at the time the sidewalks were laid, the plaintiffs were building 20 bungalows on the property they owned and were taking people out to the property to show them the bungalows; that the plaintiffs laid sidewalks from one end of the subdivision to the other end in order to make it passable for the people - so that they did not have to walk in the mud.

The defendant testified that he had a telephone conversation with Fred Buck, in which Buck said: "Do you want me to put the sidewalk in past your lots on Campbell Avenue?"; that he, the defendant replied "No," and that that was the end of the conversation; that a bill for the cost of the sidewalks was presented to him personally by the contractor who laid the sidewalks, and that he, the defendant, said "why do you send it to me, I didn't order anything from you;" that the contractor said, "I know you didn't but I presented it to Mr. Buck and he said he





wouldn't pay it, and told me to send it to you;" that after the work was completed Fred Buck spoke to him, the defendant, about the price of the sidewalk.

The wife of the defendant testified that before she married the defendant she worked in the office of the defendant as a stenographer; that sometime in the fall of 1919, around August or September, Fred Buck called up over the telephone, said he was going to lay "the sidewalks" and wanted to know whether we wanted walks laid in front of the lots "he thought we owned;" that she said that we were "not interested at all concerning any lots there or the laying of sidewalks;" that she knew whether the defendant wanted the sidewalks there; that she knew all about the business transacted in the office; that the laying of the sidewalks was discussed by the defendant "during the transaction of the laying of the walk;" that she didn't know that the plaintiffs were laying sidewalks there - only what Fred Buck told her; that she doesn't remember whether she talked to the defendant before or after she had the conversation with Fred Buck; that she doesn't remember how she knew that the defendant didn't want to have the sidewalks put in front of the lots; that she hasn't any recollection whether she talked about the sidewalks; that she "must have known at the time that we didn't want them;" that it is likely that the defendant told her something about the plaintiff wanting to put in the sidewalks before she had the talk with Fred Buck, but that she don't remember; that after she had the conversation with Fred Buck she talked with the defendant about the sidewalks.

In rebuttal Fred Buck testified that he did not have a telephone conversation with Mrs. Morris; that he never had "any dealings with her;" that he did not have a telephone conversation with the defendant in which the defendant said that he did not want him, Fred Buck, to lay the sidewalks.



...the ... of the ...  
 ...the ... of the ...  
 ...the ... of the ...

The ... of the ...  
 ...the ... of the ...  
 ...the ... of the ...

...the ... of the ...  
 ...the ... of the ...  
 ...the ... of the ...

...the ... of the ...  
 ...the ... of the ...  
 ...the ... of the ...

...the ... of the ...  
 ...the ... of the ...  
 ...the ... of the ...

...the ... of the ...  
 ...the ... of the ...  
 ...the ... of the ...

...the ... of the ...  
 ...the ... of the ...  
 ...the ... of the ...

...the ... of the ...  
 ...the ... of the ...  
 ...the ... of the ...

...the ... of the ...  
 ...the ... of the ...  
 ...the ... of the ...

...the ... of the ...  
 ...the ... of the ...  
 ...the ... of the ...

The principal contention of counsel for the defendant is that the plaintiffs have failed to prove their case by a preponderance of the evidence. Counsel for the defendant maintain that the rule is well established that where there are only two witnesses, and the statement of one witness is met by a categorical denial by the other witness, and both witnesses are of equal credibility, the plaintiff has not proved his case by a preponderance of the evidence. Counsel for the defendant argue that the rule applies with greater force in the case at bar because the plaintiff's unsupported testimony is contradicted by the defendant and the defendant's wife. In our opinion the testimony of the wife of the defendant is not satisfactory and convincing. But aside from this, we do not think that the finding of the trial court should be disturbed. Ordinarily the finding of a trial court upon questions of disputed fact will not be reversed unless the finding is clearly contrary to the weight of the evidence. Lyons v. Strand, 257 Ill. 350, 353; Halbert v. City of Chicago, 213 Ill. 453, 456. We are of the opinion that the finding of the trial court is not manifestly against the weight of the evidence.

Counsel for the defendant cite the case of Praslee v. Glass, 61 Ill. 94, in support of their contention that the plaintiffs have not established their case by a preponderance of the evidence. In the case of Praslee v. Glass, supra, the court said (p. 95): "It belongs to the plaintiff to make out a case. The burden of proof is upon him, and where the issue rests upon the sworn affirmation of one party and the sworn denial of the other, both having the same means of information and both unimpeached, and testifying to a state of facts equally probable, a conscientious jury can only say that the plaintiff has failed to establish his claim. Without saying that this court would set aside a verdict for the plaintiff, rendered in such cases, on the





ground alone that it was not sustained by the evidence, we must set aside one resting only upon the evidence of the plaintiff when that is contradicted not only by the defendant but also by another witness, and there are no elements of probability to turn the scale. Such is the present case."

The case of Feaslee v. Glass, supra, was distinguished in the case of West Chicago A. & C. Co. v. Lisserewitz, 197 Ill. 607, which held (p. 615) that "even where the plaintiff was contradicted by the defendant and another witness, the judgment would not be reversed, if there were elements of probability to turn the scale." In considering the case of Feaslee v. Glass, supra, the court said in the case of West Chicago A. & C. Co. v. Lisserewitz, supra, (p. 615):

"This court has reversed judgments, as opposed to the preponderance of the evidence, when they rested on the unsupported testimony of the plaintiff, contradicted by that of the defendant and one or more corroborative witnesses. But these decisions have no application at the present time. A leading case among this class of decisions is the case of Feaslee v. Glass, 61 Ill. 94; and it was there said, that the court would set aside a verdict for the plaintiff, resting only upon the evidence of the plaintiff, when that was contradicted not only by the defendant, but also by another witness, 'and there are no elements of probability to turn the scale.'"

The case of West Chicago A. & C. Co. v. Lisserewitz, supra, was cited with approval in the case of Chicago City Ry. Co. v. McClain, 211 Ill. 589, 595.

Counsel for the defendant cite the cases of Northern Trust Co. v. Parker, 305 Ill. App. 480, and Lullivan v. Andrews, 305 Ill. App. 590, in support of their contention that a party holding the affirmative of a proposition does not maintain it by a preponderance of the evidence, where there are only two witnesses, both equally credible, who contradict each other. We do not approve of the holdings in these cases. In determining the credibility of witnesses, their demeanor and manner of testifying may be considered. Even where there are only two





witnesses, and their testimony is directly contradictory, and there is nothing inherently improbable in the testimony of either, it is difficult to understand how a reviewing court, which does not see the witnesses nor hear them testify, could reasonably say that both are equally credible. We think that the correct rule is stated in the case of Harring v. Foxitz, 6 Ill. App. 308. In that case the court said (p. 213):

"It will not do to say as a matter of law, that there can be no preponderance of the evidence in favor of the party holding the affirmative, when there are but two witnesses upon the facts in issue, and one testifies contrary to the other. In such case, the court or jury may apply the usual tests of credibility, give credence to the testimony of one, if he appears more worthy of it, and reject that of the other."

To the same effect substantially are the following cases:

Nataly v. Kiser, 162 Ill. App. 542, 556, 559; Starns, Backus & Co. v. Hears Slayton Lumber Company, 226 Ill. App. 287.

Even in a criminal case where the degree of proof required is proof beyond a reasonable doubt, the rule is well established that "the fact that there was only one witness testifying to the commission of the crime, and that he was contradicted by the defendant, is not alone sufficient to justify a reversal."

To the same effect are the following cases: The People v. Greenberg, 302 Ill. 546, 548; The People v. Neetcher, 295 Ill. 580, 584; The People v. Maciejewski, 294 Ill. 590, 596.

It is further urged by counsel for the defendant, as a ground for reversal, that the trial court erred in refusing to admit in evidence a carbon copy of the following letter, addressed to the plaintiffs and alleged to have been written by the defendant: "Regarding our 'phone conversation about walk on Campbell Avenue where you are building, I am not interested in laying or paying for the same, past any property I own on that street." In our opinion the trial court ruled





correctly in excluding the copy of the letter. A proper foundation for its admission was not laid. All that the record shows is the following offer: "I offer this copy in evidence. I gave notice to produce, and they failed to produce it." No proof was made that the copy of the letter was a true and correct copy or that the copy was a carbon copy. The Richards Iron Works v. Glennon, 71 Ill. 11, 12. Furthermore, there is no evidence that the letter was mailed or otherwise sent to the plaintiff. Fred Buck testified on behalf of the plaintiffs that he did not receive the letter.

For the reasons stated the judgment is affirmed.

AFFIRMED.

Hatchett, F. J., and McDurely, E., concur.



...the ... of the ...

CENTRAL TRUST COMPANY OF  
ILLINOIS, a corporation,  
Appellant,

vs.

JOHN A. DEFANT,  
Appellee.

APPEAL FROM

MUNICIPAL COURT

OF CHICAGO.

234 I.A. 649

MR. JUSTICE JOHNSTON DELIVERED THE OPINION OF THE COURT.

This is an appeal by the plaintiff, the Central Trust Company of Illinois, from a judgment in favor of John A. Defant, the defendant, in an action brought by the plaintiff for an alleged breach of contract by the defendant. The case was tried before the court without a jury.

The only question involved is whether the finding of the trial court was manifestly against the weight of the evidence. We are of the opinion that it was. The evidence on behalf of the plaintiff clearly proves the allegations of the plaintiff's statement of claim. No evidence whatsoever was introduced on behalf of the defendant. The facts are substantially as follows: Widmeyer, a bond salesman employed by the plaintiff, secured a signed open order on January 10, 1922, from the defendant to sell 50 shares of Brunswick-Balke preferred stock at one hundred dollars (\$100) per share and he accordingly placed the order with Trees, a trader for the plaintiff. Shortly after September 14, 1922, Trees received a modification of the original order from the defendant. The modification ordered a sale of the stock at \$102 per share. The modification of the order was confirmed by a letter of the plaintiff written to the defendant on September 30, 1922. On October 24, 1922, the plaintiff wrote to the defendant advising him that the plaintiff had sold the stock in





accordance with the defendant's instructions. Widmeyer testified that he went to see the defendant late in October after the sale and before it was covered, and asked the defendant for the stock but that the defendant told him that he, the defendant, had sold the stock and consequently could not deliver it. Widmeyer and Trees went to see the defendant again but he refused to see them. Trees then ordered the purchase of 50 shares of the stock in the market to cover the sale. The stock was purchased at its fair market price of \$103. The plaintiff proved damages amounting to \$1.00 per share or \$50, together with \$1.00 war tax and \$15.00 brokerage commission.

In our opinion the judgment of the trial court should be reversed with a finding of facts. Judgment will be entered here for the plaintiff in the sum of \$66.

JUDGMENT REVERSED WITH FINDING OF FACTS.

Hatchett, P. J., and McGuirely, J., concur.



allegations with the defendant's investigation. Although testified that he was in the defendant's house in October after the sale and before it was verified, and asked the defendant for the same but that the defendant said she had not the defendant, had not the which was subsequently said not to have been. There was no the defendant's house but in October it was there. There was ordered the purchase of an house at the time in the house in order the sale. The state was purchased at the time of the sale of 1900. The plaintiff never made any attempt to pay for the house at 1900, payment with 1900 was not made. Defendant testified.

In the October the judgment of the court was made. It was ordered with a trustee of 1900. Defendant will be ordered to pay for the plaintiff in the sum of \$100. PROCEEDING WITH THE STATE OF TEXAS.

Witness, J. L. and Attorney, A. J. J. J.

FINDING OF FACTS.

The court finds as a fact that the defendant placed an open order with the plaintiff to sell 50 shares of Brunswick-Malke preferred stock at \$100 per share; that the plaintiff sold the stock; that a demand was made by the plaintiff on the defendant to deliver the stock; that the defendant refused to deliver the stock; that the plaintiff purchased the stock in the open market and thereby was damaged to the amount of \$66.





3929a

373 - 29031

MAURICE J. RABBINS,  
Appellant.

vs.

CHICAGO RAILWAYS COMPANY,  
CHICAGO CITY RAILWAY COMPANY,  
CALUMET AND SOUTH CHICAGO  
RAILWAY COMPANY and THE  
SOUTHERN STREET RAILWAY COMPANY,  
corporations, doing business as  
Chicago Surface Lines,  
Appellees.

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

234 I.A. 649

MR. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT.

This is an appeal by the plaintiff, Maurice J. Rabbins, from a judgment in favor of the defendants, the Chicago Railways Company et al., in an action by the plaintiff for damages for injuries received by reason of the alleged negligence of the defendants.

The case was tried before a jury. The verdict of the jury was against the plaintiff. The evidence on behalf of the plaintiff shows substantially that he was a physician and surgeon, employed as an ambulance surgeon by the City of Chicago; that on August 12, 1921, at about 8:45 p.m., on a clear night, he drove his automobile on Wabash avenue, in the City of Chicago, south to 11th street, then turned west one block into State street; that before driving into State street he looked to see if any street car was coming in either direction; that he could see for a distance of one hundred and fifty to two hundred and fifty feet, but saw no street car; that he turned into State street on the west side of the street, and drove in the south-bound street car track at a speed of from twelve to fifteen miles an hour; that his destination was a barn owned by the police department in which he kept his automobile, the barn being about 230 feet south of 11th street on the east side of State street; that about half way



12000 278

100-443886-100

0.01

THESE ARE THE NAMES OF THE  
PERSONS WHO WERE ARRESTED  
ON MAY 1968 AND WHO WERE  
ARRESTED ON MAY 1968 AND WHO  
WERE ARRESTED ON MAY 1968

• [www.irs.gov](http://www.irs.gov) is the official website of the Internal Revenue Service.

1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 2679, 2680, 26

...and ... ..

[illegible]

THE UNIVERSITY OF CHICAGO PRESS

any one against the Ministry. The evidence on which it was based was entirely unconvincing.

[illegible]

Work on a daily basis with your child needs to *fill* his *fun*.

© 2000 Blackwell Science Ltd, *Journal of Internal Medicine* 247: 395–402

[illegible]

CONFIDENTIAL

...and the results of the analysis are presented in Table 1.

*Journal of Management Education* 32(10) 1039-1050

NOTED FOR THE RECORD THAT THE ABOVE IS A COPY OF THE ORIGINAL FILED IN THE OFFICE OF THE ATTORNEY GENERAL, STATE OF TEXAS, AT DALLAS, TEXAS, ON MAY 1, 1968.

was found, hand-drawn with a pencil, and is still in the

1. The first step is to identify the problem or question that needs to be answered. This involves understanding the context and the specific requirements of the task.

between 11th street and the barn he heard a bell from the rear, indicating the approach of a street car; that he continued at the same rate of speed and still in the street car track and just prior to reaching the street in front of the barn, leaned over, put his left hand out over the side of the car as a signal of his intention to turn, and turned his car in to the east to drive into the barn; that his car was almost entirely out of the street car tracks when the street car, coming from behind him, struck the rear left wheel of the automobile, turning the automobile around so that it was headed towards the north, and dragging it about the full length of the automobile approximately 30 feet.

The substance of the evidence on behalf of the defendants is that the street car was going at a rate of from 12 to 15 miles an hour in the block north of 11th street; that the motorman saw the plaintiff's automobile as it was turning into State street, at which time the street car was about 200 feet north of 11th street; that when the motorman saw the automobile he turned off his power and coasted until he came to a point about 75 feet back of the automobile, which was then in the street car tracks ahead of the street car; that the motorman rang his gong and the plaintiff drove his automobile to the right out of the street car tracks and towards the right curb; that the plaintiff drove 75 or 100 feet further, gave no signal of his intention to turn, and then suddenly turned east across the street car tracks and was struck by the street car; that when the plaintiff's automobile drove off the street car tracks, the motorman increased his speed, which was then 8 to 12 miles, to a speed of 12 to 15 miles an hour, and the street car was 20 to 30 feet behind the automobile when the automobile made the sudden turn; that the motorman then threw off his power and applied the brakes, but was unable to stop the street car in time to avoid the collision.

The principal ground on which the plaintiffs ask for



THE COURT OF APPEALS IN THE DISTRICT OF COLUMBIA, in the case of the People of the District of Columbia vs. John Edgar Hoover, has affirmed the judgment of the District Court, which was entered on the 14th day of June, 1934, and has ordered that the judgment be carried into effect.

a reversal of the judgment is that the verdict of the jury is "contrary to the clear preponderance of the evidence." The arguments on the evidence are very clearly presented by both sides, and show a direct conflict of the evidence on the material issues in the case. Counsel for the defendants, however, do not consider that the evidence is conflicting. They admit that the testimony of the plaintiff's witnesses does "not agree" with the testimony of the defendants' witnesses, but they maintain the verdict is in accordance with the "manifest preponderance of the evidence." Counsel for the defendants further contend that the verdict "was amply justified upon plaintiff's evidence alone so that such conflict as there was in the evidence of the respective parties was not particularly important in the ultimate result." We do not agree with the contention of counsel for the defendants that the verdict is "amply justified upon plaintiff's evidence alone." But we are of the opinion that in view of the conflict in the evidence on the issue of fact, which we think is controlling, we would not be warranted in disturbing the verdict of the jury. The precise question, which in our view is decisive on the facts, is whether the plaintiff turned west out of the track, and afterwards attempted to cross the track going towards the east in front of the car. On this issue the testimony is directly conflicting. The plaintiff and two witnesses on his behalf testified that the plaintiff's automobile was struck when the automobile was turning out of the track towards the east near the barn, which was the destination of the plaintiff, and which was on the east side of the street. The motorman of the street car, and four other witnesses on behalf of the defendants, testified that the plaintiff turned out of the car track to the west, and afterwards started across the track to the east in front of the car. Counsel for the plaintiff maintain that the testimony of the defendants' witnesses is improbable and unreasonable in many respects, and





that "the evidence clearly preponderates in support of the testimony" of the plaintiff. But counsel for the plaintiff also state that "the evidence presented on the trial was sharply conflicting."

In our interpretation of the evidence there is ample evidence to sustain the verdict of the jury; and in view of the conflict of the testimony we do not think that we should set the verdict aside. "If any rule of this court can be as well established as to be neither questioned nor require the citation of authorities to support it, it is that a verdict will not be set aside whenever there is a contrariety of evidences, and the facts and circumstances, by a fair and reasonable intendment will authorize the verdict, notwithstanding it may appear to be against the strength and weight of the testimony." Illinois Central Railroad Company v. Gillis, 68 Ill. 317. To the same effect is the case of Bradley v. Palmer, 193 Ill. 15, 89. In our opinion the verdict of the jury is not manifestly against the weight of the evidence.

Counsel for the plaintiff object to the following instruction given at the request of the defendants:

"The court instructs you that while the motorman of a street railway in operating cars is bound to have regard to the rights and safety of others, yet he is not obliged to be all the while on his guard against the unusual, extraordinary and not reasonably to be expected; and if you believe from the evidence, under the instructions of the court, that what plaintiff did on the occasion in question was, under all the facts and circumstances as you find them from the evidence, extraordinary, not reasonably to be expected or unusual, and that as the car approached the place in question at the time in question, the said car was being operated with ordinary care by the motorman in charge thereof, then it became the duty of the motorman to stop his car only as soon as he had notice or knowledge of the intention of plaintiff to do as he did - if you believe that what he did was not usual or ordinarily to be expected; and if you believe from the evidence, under the instructions of the court, that notice or knowledge of plaintiff's intention to do what he did as you find it from the evidence - if you believe that what he did was unusual and extraordinary and not reasonably to be expected - came too late for the motorman in the exercise of ordinary care to stop said car in time to avoid injury to plaintiff then you must find your verdict in



that the evidence clearly preponderates in support of the  
"defendant" of the plaintiff. But counsel for the plaintiff  
also state that "the evidence presented in the trial was  
completely contradictory."

In our interpretation of the evidence there is ample  
evidence to sustain the verdict of the jury and in view of the  
verdict of the defendant we do not think that we should set  
the verdict aside. "It may well be said that we do not  
reconsider as to be without consideration and require the return  
of instructions to support it, it is that a verdict will not be  
set aside whenever there is a substantiality of evidence, and the  
facts and circumstances, by a fair and reasonable inference  
will sustain the verdict, notwithstanding it may appear to  
be against the evidence and weight of the testimony." Illinois  
Central Railroad Company v. Illinois, 101 Ill. 517. To the same  
effect is the case of Chicago v. Chicago, 101 Ill. 517. It  
was again the verdict of the jury is not sufficient against  
the verdict of the jury.

Answered for the plaintiff as to the following:

Interrogatories asked of the defendant:

1. The above answers you that while the defendant  
of a street railway in operating cars in power to have  
placed in the tracks and under its control, yet it is  
not liable to be all the while as the power supplied  
the company, notwithstanding and was reasonably to be  
expected and it was believed from the evidence, under  
the instructions of the court, that such plaintiff did  
as the defendant in evidence was, under all the facts  
and circumstances as you find from the evidence,  
extrinsically, was reasonably to be expected to be done  
and that as the car approached the place in question  
it was in evidence, the car was being operated  
right against the plaintiff's property in Chicago, Illinois.  
That it is the duty of the defendant to keep the car  
only on track as he had notice of the location of the car  
because of plaintiff's to be as he did - if you believe  
that what he did was wrong we certainly do not  
expect; and if you believe from the evidence, under  
the instructions of the court, that such as plaintiff  
of plaintiff's instruction as to what he did as you find  
is from the evidence. It was believed that the car

According to the argument of counsel for the plaintiff, the instruction "lays down the proposition that it became the duty of the motorman to stop his car only as soon as he had knowledge of the intention of the plaintiff to do as he did, that is, to turn off the tracks, and that if such knowledge came to the motorman too late for him to stop his car in time to avoid the collision, then the jury were instructed to find a verdict in the defendants' favor." Counsel for the plaintiff maintain that "it is apparent from a reading of this instruction that the jury would clearly be led to believe that unless the circumstances were such that the motorman was able actually to bring his car to a full stop and failed to do so, there could be no recovery by the plaintiff." We do not think that the jury were misled into believing that the instruction intended to convey the idea that the defendants were excused from liability if the circumstances were such that the motorman could not bring the car to a complete stop or standstill. From the context of the instruction the word "stop" reasonably means that as soon as the motorman, while operating the car with ordinary care, had notice of the danger of a collision, it became his duty to use all appliances on his car that are used to bring the car to a stop, with a view to avoiding a collision with the plaintiff's automobile. The instruction is drawn on the hypothesis that the act of the plaintiff was "unusual, extraordinary and not reasonably to be expected;" and that in such case "it became the duty of the motorman to stop his car only as soon as he had notice or knowledge of the intention of plaintiff to do as he did - if you believe that what he did was not usual or ordinarily to be expected." Counsel for the plaintiff contend that the instruction "was clearly prejudicial to the plaintiff and alone should be sufficient to warrant a reversal." We do not agree with the contention of counsel for the plaintiff.



According to the statement of counsel for the plaintiff,

the defendant "has been the proprietor of the business since the

year of the defendant's death his son has been in the

business of the defendant of the defendant for the last ten years,

and he has not the right, and that it was understood that

the defendant has been the proprietor of the business since the

death of the defendant, and that the defendant has been the

proprietor of the business since the death of the defendant,

and that the defendant has been the proprietor of the business

since the death of the defendant, and that the defendant has

been the proprietor of the business since the death of the

defendant, and that the defendant has been the proprietor of

the business since the death of the defendant, and that the

defendant has been the proprietor of the business since the

death of the defendant, and that the defendant has been the

proprietor of the business since the death of the defendant,

and that the defendant has been the proprietor of the business

since the death of the defendant, and that the defendant has

been the proprietor of the business since the death of the

defendant, and that the defendant has been the proprietor of

the business since the death of the defendant, and that the

defendant has been the proprietor of the business since the

death of the defendant, and that the defendant has been the

proprietor of the business since the death of the defendant,

and that the defendant has been the proprietor of the business

since the death of the defendant, and that the defendant has

been the proprietor of the business since the death of the

defendant, and that the defendant has been the proprietor of

the business since the death of the defendant, and that the

defendant has been the proprietor of the business since the

Counsel for the plaintiff argue that the instruction "completely ignores the contention of the plaintiff that the street car was going at such a rate of speed as to amount to negligence, in view of the motorman's knowledge of the presence of the plaintiff's automobile on the tracks in front of the street car at such a rate of speed and so closely to the plaintiff that in the event of his turning off or slowing down for any reason, the street car could not either have been stopped or its speed slackened sufficiently to have avoided running into him." The answer, we think, to this objection is that the instruction is drawn on the theory that the street car "was being operated with ordinary care by the motorman;" that the act of the plaintiff was "unusual and extraordinary and not reasonably to be expected;" and that the notice or knowledge of plaintiff's act "came too late for the motorman in the exercise of ordinary care to stop said car in time to avoid injury to plaintiff."

It is further objected by counsel for the plaintiff that the following instruction, given in behalf of the defendants, was erroneous and prejudicial to the plaintiff:

"The court instructs you that if you believe from the evidence, under the instructions of the court, that the plaintiff was suddenly and without any negligence or fault on the part of the defendants placed in a position of danger, then in order to charge the defendants with the duty to avoid injuring the plaintiff, the plaintiff must show by a preponderance of the evidence that the circumstances were such that the servant or servants of the defendants had time and opportunity to become conscious by the exercise of ordinary care, of the facts giving rise to such duty, and a reasonable opportunity to perform it. And if you further believe from the evidence, under the instructions of the court, that the circumstances as shown by the evidence did not charge the said defendants with the duty as thus defined, or if you believe from the evidence, under the instructions of the court, that the said defendants did not have a reasonable opportunity to perform, by the exercise of ordinary care, such duty as thus defined, then you should find the defendants not guilty."

Counsel for the plaintiff maintain that the instruction "ignores the contentions of the plaintiff as to the speed of the street car and the failure of the motorman to keep it in control after the plaintiff first drove on to the street car tracks and





prior to the time of his turning off." We do not think that the instruction is intended primarily to relate to the question of speed. As we interpret the instruction, the purpose of it is to cover the defendants' theory of the case that the plaintiff turned out of the track to the west, and then suddenly and unexpectedly started to cross the track towards the east.

Counsel for the plaintiff state that "the instruction would be applicable if the collision had taken place immediately after the plaintiff drove on to the street car tracks, but it can have no application to the circumstances here where the motorman admitted seeing the plaintiff on the tracks when the street car was more than 400 feet north of the place of the collision."

As we have stated, our view of the instruction is that it is drawn on the defendants' theory that the collision did take place "immediately after the plaintiff drove on to the street car tracks;" that is, after the plaintiff drove on to the tracks while attempting to cross to the east side of the street. The rule is a familiar one that "each party has the right to have the jury instructed upon his theory of the case if it has a basis in the evidence upon which to rest." Chicago Union Traction Co. v. Bready, 206 Ill. 618, 623.

Counsel for the plaintiff further object to the instruction that "it was not a question of whether 'the servant or servants of the defendants had time and opportunity to become conscious by the exercise of ordinary care, of the facts giving rise to such duty' - the duty to avoid injuring the plaintiff - but whether the defendants' servants had time and opportunity to avoid the consequences of the dangerous position of the plaintiff." We think that the objection is without merit. The motorman would have to "become conscious" of the facts giving rise to the duty to avoid injuring the plaintiff, before he could "avoid the consequences of the dangerous position of the plaintiff."

Counsel for the plaintiff contend that "the instructions





as a whole were prejudicial to the plaintiff because of their great number," and also because of the number of instructions that concluded with the direction to the jury to find the defendants "not guilty" or to find a verdict in favor of the defendants. Twenty-four instructions were given in behalf of the defendants. Seven of these instructions concluded with a direction to find the defendants "not guilty", and two concluded with a direction to find a verdict for the defendants. The principles of law applicable to the case are simple. The number of instructions which were given is out of proportion to the issues involved. The practice of giving an excessive number of instructions has been repeatedly condemned. City of Salem v. Webster, 192 Ill. 369, 374; Adams v. Smith, 58 Ill. 417, 419; Wood v. Illinois Central Railroad Company, 185 Ill. App. 180, 184; Helson v. Chicago City Ry. Co., 163 Ill. App. 98, 102; Chicago City Ry. Co. v. Sandusky, 99 Ill. App. 164, 168, 169, 170.

In the case of Adams v. Smith, *supra*, where 18 instructions were given for one of the parties, in disapproving of the practice of giving an unnecessary number of instructions, the court said (p. 419): "We do not understand why it is that counsel, where they have a good cause, will seek to encumber it with such a multitude of instructions, the almost invariable effect of which is, to introduce manifest error into the record. Such a practice does not enlighten the minds of a jury on the issues submitted to them, but rather tends to introduce confusion. Instructions should always be clear, accurate and concise statements of the law as applicable to the facts of the case. It was never contemplated, under the provisions of the practice act, that the court should be required to give a vast number of instructions, amounting, in the aggregate, to a lengthy address. It is a mischievous practice, and ought to be discontinued. A few concise statements of the law applicable to the facts,





are all that can be required, and are all that can serve any practical purpose in the elucidation of the case."

In the case of City of Salem v. Webster, supra, in which 31 instructions were presented on behalf of the defendant, the court said (p.374): "The presentation of such a number of instructions was wholly improper. Principles of law applicable to the case were not numerous or involved, and there was no occasion for imposing the labor of such an examination upon the court. No trial judge can properly examine and pass upon such a mass of instructions within the time usually available at a trial."

The practice of concluding a number of instructions with the phrase "not guilty" has been repeatedly condemned, and in some instances reversals have been granted for the giving of an unnecessary number of such instructions. Wood v. Illinois Central Railroad Company, supra; Nelson v. Chicago City Ry. Co., supra. In the case at bar, although we disapprove of the number of instructions that were unnecessarily given on behalf of the defendants, and although we think that the phrase "not guilty," and similar phrases, were unreasonably repeated in a number of the instructions, yet we are of the opinion that the probabilities are that the jury were not misled, or influenced prejudicially against the plaintiff, by the instructions. The issues were so simple and plain that we do not think that reasonably it can be said that the issues were confused or that the jury were misled by the instructions.

Counsel for the defendants contend that the objections of the plaintiff to the instructions cannot be considered because "the plaintiff made no objection and preserved no exception at the trial or before final judgment so far as is shown by the bill of exceptions." We do not think that the point of counsel for the defendants is well taken. The record shows that a motion





for a new trial was made, but the record does not show that the motion was in writing or that the grounds of the motion were specifically stated. In such case the defendants had the right to move for a rule on the plaintiff to specify the grounds of the motion for a new trial. The Ottawa, Oswego & Fox River Valley R. R. Co. v. McKath, 91 Ill. 104, 111; The Metropolitan West Side Elevated R. R. Co. v. White, 166 Ill. 375, 378. The defendants did not make such a motion, and, therefore, they cannot now object on appeal that the motion for a new trial was not in writing or that the grounds were not specifically stated. The Chicago Union Traction Company v. City of Chicago, 209 Ill. 444, 445. In this state of the record the defendants are entitled to assign as error any error that may appear in the record, including any error in the giving or refusing of instructions. Yarber v. Chicago & Alton Ry. Co., 235 Ill. 585, 602; People v. Melnick, 263 Ill. 24, 31.

For the reasons stated the judgment is affirmed.

AFFIRMED.

Hatchett, P. J., and McSurely, J., concur.





3930a  
APPEAL FROM MUNICIPAL COURT  
OF CHICAGO.

234 I.A. 650

JOSEPH HURT and JOSEFA HURT,  
Appellees,

vs.

MARTIN A. ROSS,  
Appellant.

MR. JUSTICE JOHNSON DELIVERED THE OPINION OF THE COURT.

This is an appeal by Martin A. Ross, the defendant, from a judgment in the Municipal court of the City of Chicago, in an action of forcible detainer in favor of the plaintiffs, Joseph and Josefa Hurt.

The abstract does not show the judgment that was rendered in the action. Furthermore, the index to the abstract does not refer to the judgment. Counsel for the plaintiffs invoke the rule that where the abstract fails to show the judgment that was entered by the trial court, there is nothing to review and the judgment should be affirmed. On the authorities we are compelled to hold that the contention of counsel for the plaintiffs is correct. Sellers v. Puritan Product Co., 317 Ill. App. 617; Stewart v. Wilson, 211 Ill. App., 522; Amundson Printing Co. v. Empire Paper Co., 83 Ill. App., 440. Courts may turn to the record, where the abstract is deficient, to affirm a judgment but never to reverse a judgment. Varner v. Armstrong, 214 Ill. App., 128; Amundson Printing Co. v. Empire Paper Co., same.

As the court said in Amundson Printing Co. v. Empire Paper Co., same, the method we have adopted of disposing of the case at bar is not a satisfactory one, but if the rules of court are to be respected and followed, it is the only course that should be pursued.

The judgment of the trial court is affirmed.

AFFIRMED.

Matchett, P. J., and McSurely, J., concur.



THE  
OFFICE OF THE  
SECRETARY OF THE  
NAVY  
WASHINGTON

3841 A. 650

THE SECRETARY OF THE NAVY

THIS IS TO CERTIFY THAT THE FOLLOWING IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS KEPT IN THE OFFICE OF THE SECRETARY OF THE NAVY, WASHINGTON, D. C.

THE FOLLOWING IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS KEPT IN THE OFFICE OF THE SECRETARY OF THE NAVY, WASHINGTON, D. C.

THE FOLLOWING IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS KEPT IN THE OFFICE OF THE SECRETARY OF THE NAVY, WASHINGTON, D. C.

GEORGE WILLIAMS,  
Appellee,

vs.

UNITED MANUFACTURING AND  
DISTRIBUTING CO., a Corporation,  
Appellant.

3931a  
APPEAL FROM SUPERIOR COURT

OF COOK COUNTY.

234 I.A. 650

MR. JUSTICE MEADLEY DELIVERED THE OPINION OF THE COURT.

Plaintiff, bringing suit for compensation for services and for the value of certain tools, dies, and models, had a verdict from which he remitted \$650 and judgment for \$800 was entered against defendant.

The parties had a series of conferences relative to a proposed contract by which defendant was to obtain from plaintiff his services in connection with the manufacture and sale of phonograph meters according to designs and improvements thereon made by plaintiff. The contract contemplated payment to plaintiff of a commission on sales of such meters and \$10 a day. Either party could terminate the contract on giving notice and upon such termination plaintiff was to have the right to take with him, without paying for them, all jigs, tools, dies and models purchased or manufactured in contemplation of and incident to the manufacture and sale of meters under the agreement.

Pending negotiations plaintiff, at the insistence of defendant's officers, began work. Three weeks thereafter he was notified that his services were no longer required. He was paid for the time of actual work, but claims that the agreement was that he was to be employed for sixty days at least and to receive thirty days prior notice of defendant's desire to terminate the contract.

Three written memoranda or drafts of the agreement were drawn, but none was ever executed. Plaintiff claims that there was



1934

1934

1934

1934

1934

1934

1934

at least an oral agreement the terms of which were contained in the third draft of the contract. Defendant replies that there was no agreement, for the reason that the writing was never signed; that this third draft was incomplete by the omission to insert in the blank space provided the number of days of previous notice which either party should give the other in order to terminate the contract.

It may be conceded that there was no written agreement between the parties, but the jury could properly conclude that the minds of the parties had met on all the essential details except possibly the number of days notice required for termination of the contract. Plaintiff's story on this point is consistent and convincing. There is no definite denial that both plaintiff and the officers of the defendant in good faith believed that the last draft expressed their understanding of the terms of their agreement and that it was intended the contract should be executed by all the parties. Plaintiff entered upon his employment relying upon the statements of defendant's officers that this contract was satisfactory to them and that it would be executed.

We are inclined to agree with counsel for defendant that there were errors upon the trial which under ordinary circumstances would compel a reversal. It was erroneous to send to the jury a draft of the proposed contract with written comments and notations thereon made by plaintiff. Evidently the jury accepted plaintiff's version as to the minimum of time of his employment within the thirty days notice of termination, and returned its verdict accordingly. The trial Judge seems to have been of the opinion that this part of plaintiff's claim was doubtful and hence required a *restitutio in integrum* so as to leave the judgment based upon the value of the tools, dies, and models which were to become the property of plaintiff when the contract ended. Plaintiff testified that these were worth \$900. While





these appliances had no market value, yet they had a value to plaintiff, who was experimenting and attempting to devise and perfect improvements in phonograph motors. The judgment for \$300 is well within his testimony.

While the trial was not free from errors, as we have indicated, yet under the circumstances a reversal is unnecessary and the judgment for \$300 is affirmed.

AFFIRMED.

Witchett, F. J., and Johnston, J., concur.





3932e

CHICAGO & EASTERN ILLINOIS  
RAILWAY COMPANY,  
Appellant.

vs.

CHICAGO NIGHTS TERMINAL  
TRANSFER RAILROAD COMPANY,  
Appellee.

234 I.A. 650

APPEAL FROM

SUPERIOR COURT,

COOK COUNTY.

MR. JUSTICE BARNES DELIVERED THE OPINION OF THE COURT.

This appeal is from a decree <sup>dismissing</sup> for want of equity a bill seeking an injunction against the violation of a contract, and asking for specific performance. No question arises upon the pleadings. The material facts are not disputed, most of them being stipulated to. A temporary injunction was granted and continued in effect until the entry of the decree. A motion made here to continue it in force was practically withdrawn upon an arrangement for advancing the cause for hearing.

The contract was made whereby appellee, the Terminal Company, was to switch for appellant's predecessor cars to and from the latter's rails and commercial and manufacturing establishments along the rails of appellee. The contract was entered into May 14, 1907, with appellant's predecessor, to whose properties and contract rights appellant succeeded. Except during the period of federal control of railways from January 1, 1918, to March 1, 1920, the parties to the contract continued to operate under it until appellee filed its tariffs made effective September 3, 1921, with the Interstate Commerce Commission and the Illinois Commerce Commission, respectively. Because operation under these tariffs would be a practical abrogation of the contract this suit was instituted.



3441.A. 650

RECEIVED

1911

1911

RECEIVED  
1911

1911

RECEIVED  
1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

RECEIVED 1911

The controlling question is whether the contract conflicts with laws requiring operation under such tariffs. Holding that it does we deem it unnecessary to consider the many collateral questions argued, and, therefore, only such facts as we deem sufficient on which to rest our conclusion will be stated.

Appellee is a railroad corporation organized under the laws of this State in 1898, since which time it has owned about 22 miles of railroad track in and adjacent to Chicago Heights, Illinois, over which it transports freight to and from points of connection with several common carriers, including appellant. At present it transports freight between said points of connection and more than 80 establishments, industries and team tracks located on its rails. From 1894 appellant's predecessor, its receiver, and appellant had in turn been respectively engaged, at the different periods of their operation of its railway tracks, in the transportation of property in interstate as well as intrastate commerce and as such carriers were subject to various acts of congress and statutes of this state affecting the same.

Owing to confusion and unsatisfactory service under pre-existing arrangements with the various roads using appellee's tracks it took over the control and operation of its tracks on April 16, 1900, and since then has performed the service of transporting cars of freight between the industries on its rails and the connections with trunk line carriers. On that date it entered into a contract with appellant's predecessor which continued in force until entry into the contract of May 14, 1907. The latter contract, the one in question, is referred to in the record as exhibit A. Another document executed at the same time and attached thereto is referred to as exhibit B.



will be stated.

[illegible]

14. 2007. The latter contract, the one in question in the  
with reference to the contract of 1907  
late it entered into a contract with the company's president  
cells and the investigation was then continued. On that  
transporting, and at length between the industries in the  
April 14, 1907, and when then was given the order to  
because it was the contract and was made at the time of  
pre-existing contracts with the various roads were specified  
being in question and was not a contract made by the

The latter document pertained to freight rates that would be charged by appellant from Chicago to Chicago Heights, and is concededly an unlawful agreement, but we deem its consideration unnecessary to a determination of the main issue in this case, namely, as to whether exhibit A is an unlawful contract. And we shall assume without discussion of the evidentiary facts that appellant succeeded to all the rights given by the latter contract pursuant to a deed of sale dated December 9, 1921, given under foreclosure proceedings had against appellant's predecessor.

Settlements and adjustments under exhibit A were made between the parties practically up to the time of the filing of this bill and thereafter under the order of the temporary injunction while in force.

On July 31, 1922, appellee notified appellant that it had filed "Tariff I. C. C. No. 39, Ill. C. C. No. 4, effective September 1, 1922," naming new rates to be charged for services performed by appellee. Appellant refused to pay the charges so set forth, and refusing to furnish information requested by appellee regarding inbound shipments appellee advised appellant that it would refuse to accept inbound interstate shipments unless in accordance with its tariff schedule the charges thereon were prepaid, intending to refuse to accept such shipments at the compensation provided for in exhibit A.

From March 1, 1910, until the foreclosure appellant's predecessor, and since then appellant, have had on file with the Interstate Commerce Commission and the Illinois Commissions successive tariffs which contained a provision to the effect that shipments to or from industries located on appellee's tracks via appellant's road would be treated the same as located on appellant's rails. And in accordance with said tariffs and for the rates named therein freight has been continuously transported



The latter document pertained to foreign taxes that were to be charged by applicants from Illinois to Illinois citizens, and in connection with this document, the Illinois government was not only a party to a determination of the main issue in this case, namely, as to whether or not it is an essential contract, but it also became a party to the determination of the subsidiary issue that applicants were entitled to all the rights given by the Illinois government to a bond of sale dated December 2, 1911, given under the Illinois government's bond and seal.

Accordingly, the Illinois government is a party to the

main issue between the parties previously set in the case of the Illinois government and the Illinois citizens, and the Illinois government is a party to the subsidiary issue in this case.

On July 22, 1911, the Illinois government was notified that it had filed with the Illinois government a copy of the Illinois government's bond and seal, and that the Illinois government was to be charged with the payment of the bond and seal. The Illinois government was notified that it was to be charged with the payment of the bond and seal, and that the Illinois government was to be charged with the payment of the bond and seal. The Illinois government was notified that it was to be charged with the payment of the bond and seal, and that the Illinois government was to be charged with the payment of the bond and seal.

From June 1, 1911, until the Illinois government's bond and seal was filed, the Illinois government was not a party to the main issue between the parties previously set in the case of the Illinois government and the Illinois citizens, and the Illinois government was not a party to the subsidiary issue in this case.

to and from said industries by appellant company or its predecessor. The movement of said freight on appellee's rails was made by its own engines and crew.

In none of the tariffs filed by appellant or its predecessors was appellee named as a participating carrier. It never at any time joined or concurred in any of said tariffs, naming rates to or from points on its rails, nor had any joint rates been in effect between appellant and appellee.

Prior to the filing of this suit appellee did not attempt to collect from shippers or consignees any rates or charges for its services in transporting freight to or from its connection with appellant's road. It was compensated only on the basis of exhibit A. As we deem neither the proceedings resultant upon appellant's protest against the filing of tariff rates by appellee, or the history of the Federal control, so essential to a determination of the main issue we shall not review the facts pertaining thereto.

Nor shall we set forth at length the provisions of exhibit A. It is sufficient to say with respect to the main point in controversy that under it the "Railroad" (appellant's predecessor) agreed that during a term of ninety-nine (99) years it would deliver to the Terminal Company (appellee), at its yards adjacent to the main line of the Railroad in Chicago Heights, all cars and freights that might during that period be in its possession or under its control consigned to parties other than railroad companies, at Chicago Heights, for delivery and transfer by the Terminal Company, to such consignees, and to pay monthly a certain proportionate cost and expense of the maintenance and operation of the entire railroad system to the Terminal Railroad Company, and in addition thereto the sum of one dollar for each and every loaded car "moved by the Railroad in said month upon the tracks of the Terminal Company, or any



to and from said territory by express company at the  
preference. The contract of said express company  
shall be made by the said company and agent.

In case of the carrier's failure to deliver at the

preference and express shall be a sufficient receipt.

It may be any item of merchandise in any of said territories  
located within the limits of said territories and may be  
taken from the office of express company and agent.

It may be the taking of said express company and agent

at any time from the office of express company and agent

except for the express in transportation thereof as to the

company and express company's agent. It is understood that the

the agent of express A. as we have neither the company

responsible upon express company's agent the agent of express

shall be responsible for the delivery of the express company

as a determination of the agent of express A. shall not

be the express company's agent.

Now shall we not have a branch of express company

at A. It is understood that the agent of express A. shall

be the express company's agent as the "Express" company's

representative agent shall deliver a form of receipt (see

page 4) which shall be the receipt of express company's agent

the agent of express A. shall deliver to the agent of express

at A. and the agent of express A. shall deliver to the agent

in the possession of the agent of express A. shall deliver

after the receipt of express A. shall deliver to the agent

and the agent of express A. shall deliver to the agent

to the agent of express A. shall deliver to the agent

company's agent of express A. shall deliver to the agent

part thereof," and twenty-five cents for each and every empty car. Other considerations need not be mentioned. The Terminal Company agreed that during that period it would transfer and deliver cars and freight between the tracks of the railroad and the industrial and commercial establishments reached by its rails upon the terms and conditions mentioned in the contract.

Section 4 of Article IV, referring to appellant's predecessor as "railroad," provides:

"Nothing in this agreement shall ever be construed as a limitation upon, nor as prohibiting or denying the full right of the Terminal Company to make and enforce, at any time, and from time to time, in its discretion, during said term of ninety-nine (99) years, any and all reasonable rates and charges against any industrial or commercial establishment, person, firm or corporation, other than the Railroad, served by the railroad system, or any part thereof, of the Terminal Company, for the movement of any loaded or empty cars moved upon or over its tracks, except movements to or from the Railroad or for the movement of loaded or empty cars to or from or between any manufactories, warehouses, industrial or commercial establishments located upon or served by the railroad tracks of the Terminal Company," etc.

Other details of the contract we deem it unnecessary to state.

It being altogether probable that from the importance and somewhat novel facts of this case it will ultimately go to a court of final resort, we shall not discuss the numerous authorities cited in support of the respective contentions which have been presented to us in both written and oral arguments at great length. Most of them relate to collateral questions and only indirectly to the main issue, and many deal with questions that come more frequently before other jurisdictions. A full discussion of them here, therefore, is seemingly impracticable.

We are impressed with these salient features: The parties to this contract are or have been during its existence common carriers engaged in both interstate and intrastate commerce, and as such are amenable to the Federal and State





laws relating thereto. Appellant is a trunk line running to points in the State and across its line, carrying freight to and from such points. Appellee is a terminal company employing its own equipment in switching freight cars to and from connecting lines, including appellant's, that are engaged in interstate or intrastate commerce or both. The freight transported over its lines is from shippers outside of them or to consignees having manufactories and commercial establishments on its lines. The character of the service appellee thus renders is unquestionably interstate commerce when the cars are destined for or received from points outside the State, and intrastate commerce when between points in the State.

(United States v. Union Stock Yards & Transit Co., et al., 236 U. S. 286; Kenna v. Calumet, Hammond & Southeastern R. R., 304 Ill. 301.) Such service renders appellee amenable to the laws, Federal and State, regulating transportation.

As a common carrier engaged in interstate commerce appellee is subject to the Interstate Commerce Act making it mandatory that it shall file with the Interstate Commerce Commission schedules showing all the rates, fares, and charges for transportation between different points on its route, and between points on its route and points on the route of any other carrier by railroad, when a through route and joint rate have been established. (Sec. 6 of the Interstate Commerce Act.) It is prescribed in said section that no carrier, unless otherwise provided by the act, shall engage or participate in the transportation of passengers or property, as defined in the act, unless the rates, fares and charges upon which the same are to be transported by said carrier have been filed and published as therein provided, and that the carrier shall not "extend to any shipper or person any privileges or facilities in the transportation of passengers or property, except such as are specified in





such tariffs." As before stated, no joint rate over a through route has been established between the railroads here involved. And although the tariff filed by appellant purports to include the service rendered by appellee, yet it is not a joint tariff as contemplated by the act. And if it were, appellee would be required to file with the Commission such evidence of concurrence therein or acceptance thereof as required or approved by the Commission. (Par. 4 of sec. 6 of the Interstate Commerce Act.) And there has been no such participation. Whether or not, therefore, appellant had the authority and power to file tariffs to include the service thus rendered to it by appellee, yet the act imposes on appellee as such carrier the duty of establishing in a prescribed mode the rates, whether individual or joint, to be charged for the transportation in interstate commerce of property over its lines. And rates so established are obligatory alike upon carrier and shipper, and must be strictly observed by both until changed in the mode prescribed. (United States v. Miller, 223 U. S. 599.)

It is difficult, therefore, to see how appellee, being thus subject to the provisions of the Interstate Commerce Act, could be compelled to disregard these mandatory provisions, as would be the effect of an order granting the relief sought for in this bill.

The burden of appellant's contention is that the contract is one of agency, whereby appellee renders such service for it and not for the public; that it is a contract for hire at a fixed compensation and not one affecting rates, charges or service for the public; that for such service appellant makes a charge to the public and the public deals with it and not with appellee as an independent company; that therefore the contract is not repugnant to the law requiring the filing of tariffs, because the tariffs filed by it cover the transportation from





and to points on appellee's line. There would seemingly be considerable force to this argument if appellant through a lease or otherwise exercised control of the facilities furnished by appellee. But such is not the nature of the contract. While it provides for service at a certain compensation the service is no different from that which appellee renders as a common carrier for other trunk lines, by reason of which it becomes subject to the provisions of the Interstate Commerce Act, as aforesaid. As the rates established under such act are obligatory alike upon carrier and shipper (United States v. Miller, supra), and must be enforced without discrimination, it is difficult to see how appellee can be required to enforce them against shippers by one of the connecting lines and not another. It is conceded that to enforce them as to shippers via appellant's road amounts to an abrogation of the contract. If the contract, which thus seems to conflict with the requirements of the Interstate Commerce Act, can be enforced it would seemingly open the door to attempted evasions of the act and have a tendency to destroy the uniformity of treatment manifestly contemplated by it. There is a manifest distinction, we think, between a lease of a railroad and its facilities, and a contract for service for which specific tariffs are duly required by law. The argument of appellant that while rendering for it the particular service required by the contract, appellee is not engaged as a common carrier or independent carrier we regard as wholly untenable under the facts of the case and the law applicable thereto.

The further contention that the contract is protected by the contract clause of the Federal Constitution is answered, we think, by the court in Louisville & Nashville R. R. v. Holtby, 219 U. S. 487, where it was said with respect to the exercise by Congress of its constitutional power to regulate interstate commerce "that the exercise of such power may be had or restricted





to any extent by contracts previously made between individuals or corporations is inconceivable." It was further said that "After the Commerce Act came into effect, no contract that was inconsistent with the regulations established by the Act of Congress could be enforced in any court."

Holding as we do that the contract conflicts with the provisions of the Interstate Commerce Act so that it cannot be enforced it is needless to discuss somewhat similar requirements of our State laws with which appellee has attempted to conform in filing its tariff with the State commission. Without entering into a discussion of that phase of the case further than to say that appellant as a common carrier, organized under the laws of this State, is required under the Illinois Commerce Commission law to file schedules of rates for any service performed by it without discrimination to the public or other carriers, it is enough to say that the similarity between the Interstate Commerce Act and our Public Utilities Act renders what has been said respecting the inconsistency of the contract with the former applicable to the provisions of the latter. (Terminal R. R. Assn. v. Utilities Com., 304 Ill. 312, 317.) We think the bill was properly dismissed for want of equity.

AFFIRMED.

Fitch, P. J., and Gridley, J., concur.





FILED

APR 11 1924

Robert B. Roe  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

STATE OF ILLINOIS.

APPELLATE COURT

FOURTH DISTRICT.

234 I.A. 650

Term No.13.

MARCH TERM, A.D. 1924.

Agenda No.37.

Mike Murgic,  
Appellee.

vs

Appeal from City Court of East St. Louis.

Fort Dearborn Casualty  
Underwriters,  
Appellant.:

Barry, P.J. We reversed a former judgement in this case at the March term 1923 and remanded the cause. There was a new trial which resulted in a verdict and judgement for \$1485.00. The only point now urged by appellant is that the evidence is so clear and convincing that appellee was operating his car at a speed prohibited by law he was not entitled to recover under the terms of the policy and that the cause should be reversed without remanding.

On the last trial appellee and three other witnesses testified that his car was going at a speed of 20 to 25 miles per hour when the collision occurred. One witness for appellant placed the speed at 60 miles per hour; another at 40 to 50 miles per hour. Another says it was going at a high speed and another that it was an awfully high rate of speed. Two of the witnesses for appellee did not testify on the former trial.

Appellant insists that appellee is discredited by reason of the fact that he had made a previous written statement in regard to the speed of his car which was inconsistent with his testimony. It also insists that the two new witnesses for appellee are discredited by the fact that two of appellant's witnesses testified that they were not in the vicinity of the accident at the time it





occured and also by the fact that one of them is a friend of appellee and the other is a friend of that friend. It is also argued that appellee had a powerful high geared car and that the fact that it was completely demolished by the collision with the bridge demonstrates as a physical fact that it was driven at a prohibited rate of speed. Appellant had the benefit of all of those matters before the jury whose peculiar province it was to weigh the evidence and determine the credibility of the witnesses. It is not claimed that the court committed any error in its rulings on the evidence or instructions and there is no suggestion that the verdict is excessive.

In the present state of the proof we would not be warranted in holding that the judgment is so manifestly against the weight of the evidence that it should not be allowed to stand. It is, therefore, affirmed.

AFFIRMED.

Not to be reported.





3934a

STATE OF ILLINOIS  
APPELLATE COURT  
FOURTH DISTRICT.

FILED

APR 11 1924

MARCH TERM, A. D. 1924.

Robert B. Roe  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

234 I.A. 651

AGENDA NO. 1,

TERM NO. 22.

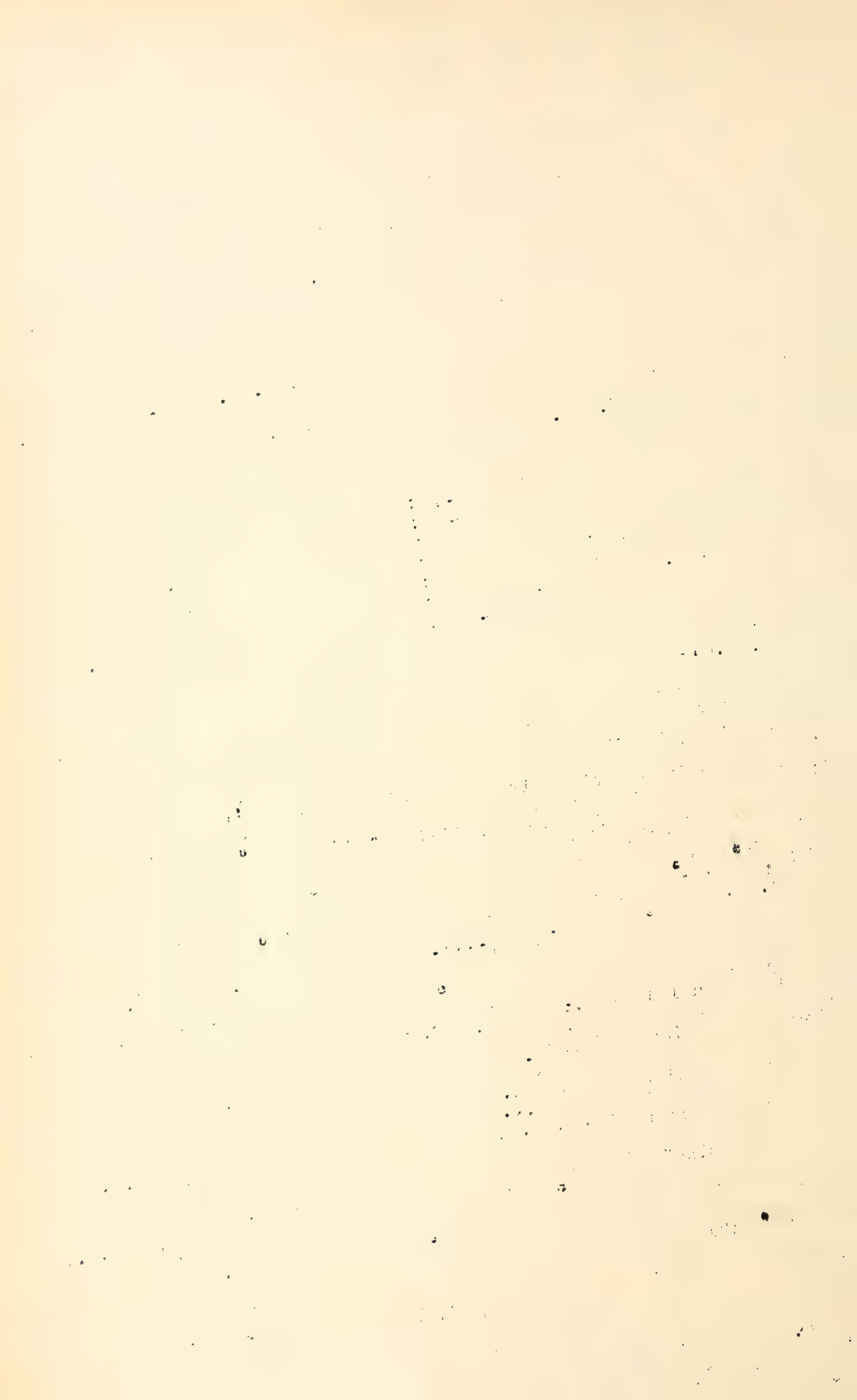
|                           |   |                  |
|---------------------------|---|------------------|
| WEST VIRGINIA COAL CO., : | : |                  |
| APPELLANT, :              | : | APPEAL FROM      |
| VS. :                     | : |                  |
| E. S. TOUCHETTE, :        | : | CITY COURT,      |
| APPELLEE. :               | : | EAST ST. LOUIS . |

Barry, P.J.- Appellant sued for the purchase price of a carload of coal and a jury was waived. The Court found that appellant is a foreign corporation and was doing business in this state at and prior to the sale in question without a license so to do, and rendered a judgment in favor of appellee. While no proposition of law was submitted to the trial court it was our duty to consider the case on its merits. P.C.C. & St.L. Ry., vs. Chicago City Ry. 300 Ill. 162.

Appellant is a corporation under the laws of Missouri with its principal and only office in St. Louis and has never had a license to do business in Illinois. It is a wholesale dealer engaged in the buying and selling of coal. It purchases the entire output of certain mines in Illinois, f.o.b. the cars at said mines and sells the coal so purchased to consumer in this state and elsewhere, f.o.b., the cars at said mines unless otherwise specially agreed. It was in the habit of sending out printed matter to its customers and prospective customers in which it represented itself as the "operator and sales agent of" several mines in Illinois with a capacity of 25,000 tons daily.

Appellant's secretary testified that he could not say how many cars of coal were sold by appellant, per week, in Illinois but that it might be more or less than 1,000. He says it was all sold of the cars at the mines unless otherwise specially agreed. It is





quite evident that large quantities of coal were purchased in Illinois and resold and delivered to persons in this state which never left the state and never became the subject of interstate commerce.

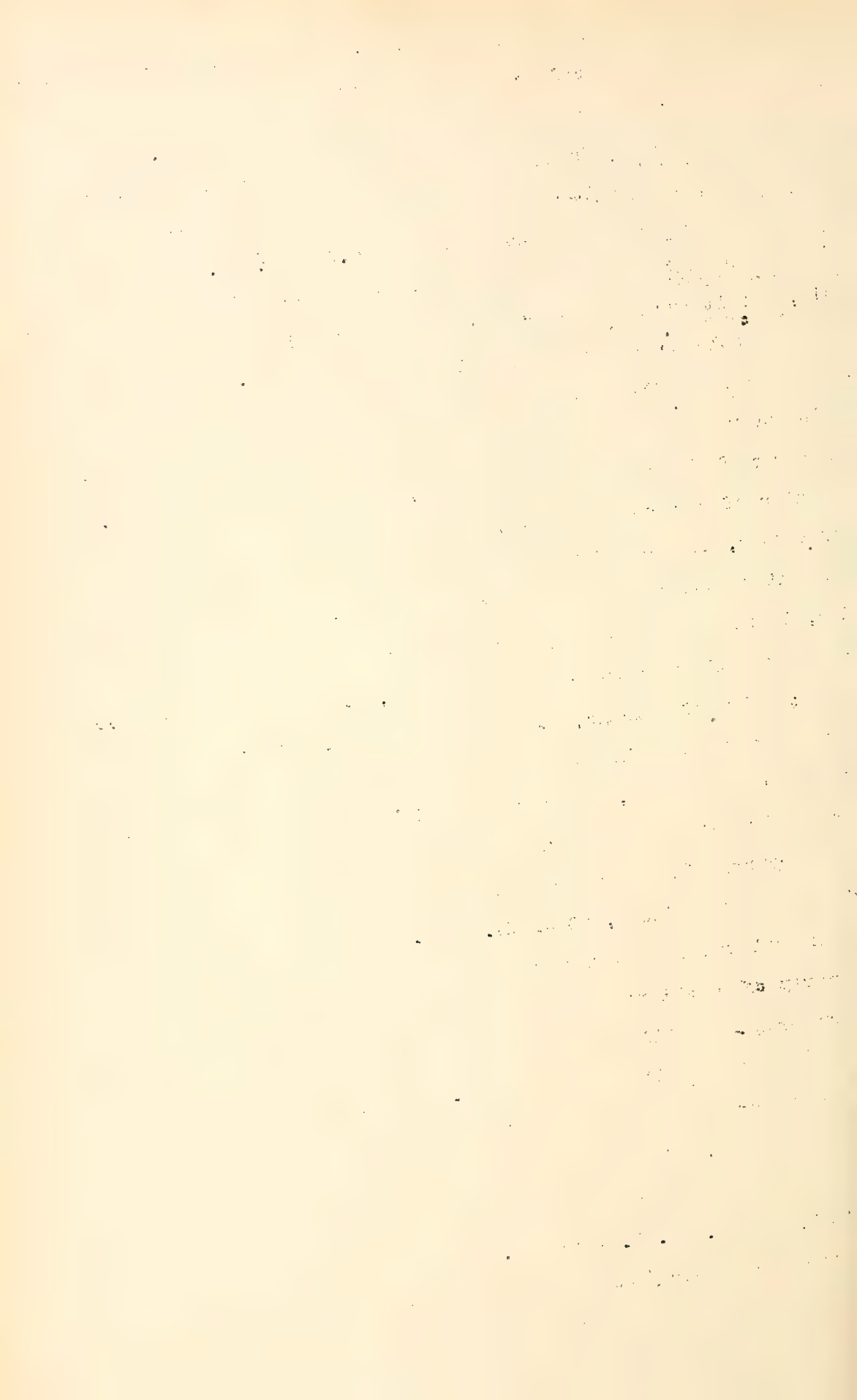
Appellant contends that all sales were made at its office in St. Louis, Mo., and that it was engaged in interstate commerce and was not subject to the Illinois Statute (Cahill ch.32 par.94). While the evidence is that all orders for coal were received and accepted at St. Louis, yet it further appears that the coal which was purchased in this state and sold to customers in Illinois was to be delivered to them from the cars at the mines. The general rule, in relation to contracts made in one place to be performed in another, is, that they are governed by the law of the place of performance, *Mason, vs. Dousay*, 35 Ill. 424.

Sales of personal property, whether made to the vendee personally or by letter, are regarded as made at the place where the vendor shows his assent to the proposal by delivering the goods to a carrier for the vendee, in the absence of any agreement of the parties or any special circumstances showing the contrary, *People, vs. Hill Top Mining Co.*, 300 Ill. 564; *City of Chicago, vs. DeSaloo*, 302 Ill. 85-89. Where the seller doing business in one state by letter makes an offer to sell goods as ordered by the buyer, doing business in another state, delivery to be in cars on tracks at the buyers place of business, and goods are ordered and delivery made in accordance with such offer, the place of sale is the buyer's place of business, 23 R.C.L. 1254.

When coal was loaded on cars at the mines in Illinois it became the property of appellant who was then notified of the fact that the cars were ready. Appellant then gave billing directions and bills of lading were issued to it as the shipper. Where, in pursuance of a contract to sell or a sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, *Cahill's Ill. St. ch. 121a par. 49.*

The evidence clearly shows that the coal purchased by appellant became its property when loaded on the cars at the mines and that coal sold by it to people in Illinois was delivered to them at the mines.





in this state and never became the subject of interstate commerce. Appellant was buying and selling coal, transacting its corporate business in Illinois without having a license so to do. Its failure to obey the law is a bar to the action and the court did not err in rendering a judgment for appellee.

AFFIRMED.

Not to be reported.





39350

Term N. 36.

Agenda No. 15.

IN THE  
APPELLATE COURT OF ILLINOIS.  
FOURTH DISTRICT.

234 I.A. 651

FILED

MARCH TERM A.D. 1924.

APR 11 1924

Robert B. Roe  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

LILLIAN B. HORSTMAN, a Minor, :  
by CHARLOTTE HORSTMAN, Next :  
Friend. Appellee. :

vs

Appeal from City Court,  
East St. Louis.  
St. Clair County, Illinois.

WILLIAM A. HORSTMAN. :  
Appellant. :

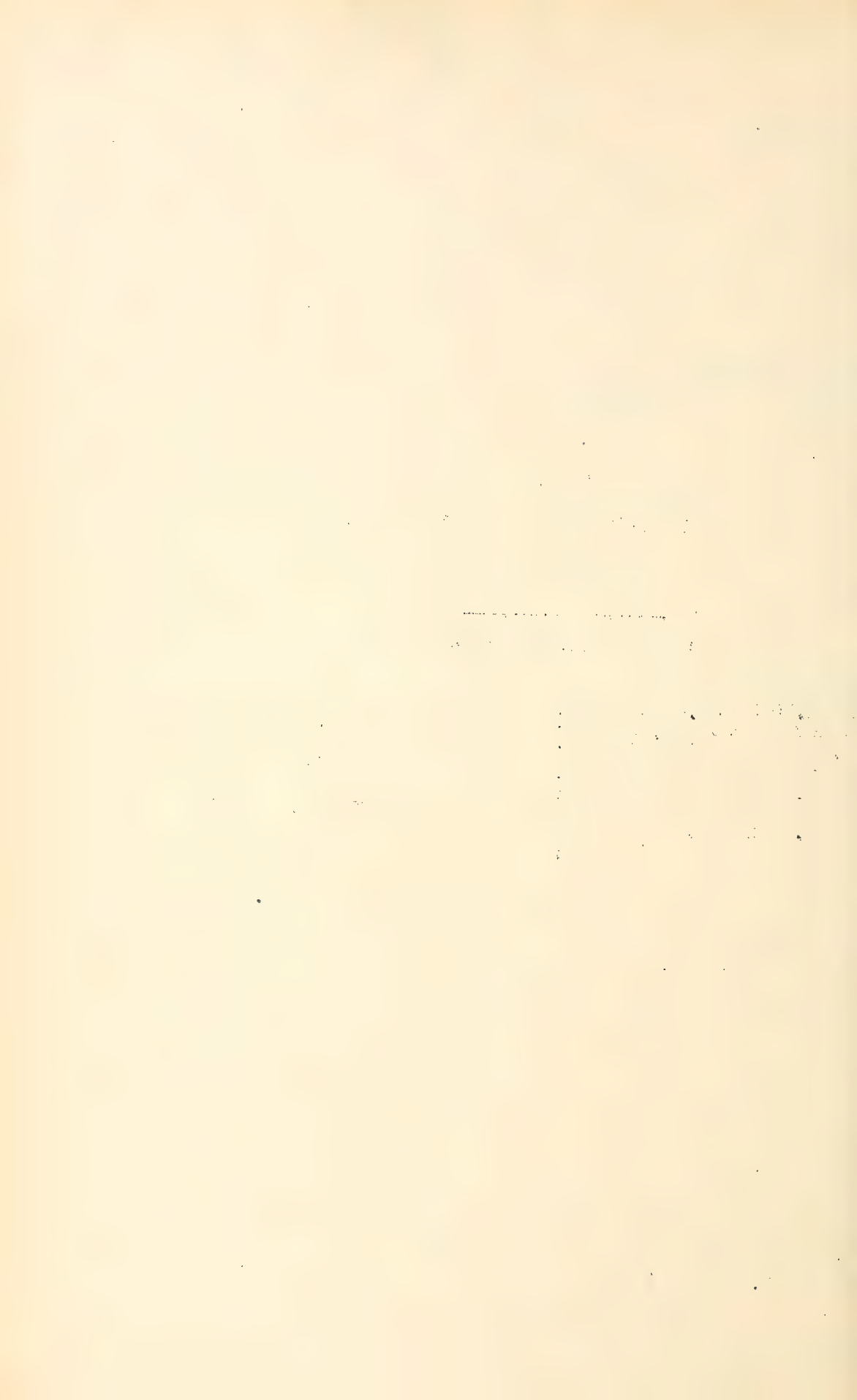
OPINION BY BOGGS, J.

This is an appeal from a judgement of the City Court of East St. Louis for \$4,000.00. in favor of appellee, for injuries sustained by her when an automobile owned and driven by appellant, her brother, and in which appellee was riding, collided with another automobile on the state highway between Chatham and Springfield, Illinois.

The declaration consists of one original and one additional count, and charges that appellee was "a passenger in said automobile at the special instance and request of the defendant, and while so a passenger in said automobile, in the exercise of due care and caution for her own safety, the said defendant so negligently and carelessly then and there drove and ran the said automobile that by and in consequence of such carelessness and negligence the said automobile, with great force and violence, collided with a certain other motor vehicle", and by reason thereof appellee was seriously and permanently injured, alleging damages, etc.

To said declaration, a plea of the general issue was filed, and a trial was had, resulting in a verdict and judgement as above set forth. To reverse said judgement this appeal is prosecuted.





The record discloses that on September 21st.1923, at about 5:15 or 5:30 in the morning, appellant and appellee left their home on 73rd Street in East St.Louis and drove to the home of Elsie Lang in said city;Miss Lang got into the automobile with them and the three proceeded on their way to the State Fair at Springfield.

The automobile in which they were riding was a Chevrolet coupe, having one seat. Appellant occupied the driver's seat, Miss Lang was in the middle and appellee was on the right hand side of the car. It had been misting rain practically all morning and along about 11 o'clock, somewhere between Chatham and Springfield, appellant turned to the left in order to pass a touring car, when his said automobile collided with an ambulance travelling in the opposite direction. By the force of the collision, appellee was thrown to the pavement and received several injuries, some of which were serious and of a permanent nature. The retina of the left eye was separated and torn loose from the wall of the eye, thereby greatly reducing the sight of that eye.

It is contended on the part of appellant for a reversal of said judgment, first: That the court erred in overruling a motion made by him at the close of appellee's evidence and again at the close of all the evidence to exclude the evidence and direct a verdict in his favor. This motion raises the question as to whether or not, taking the evidence on the part of appellee as true, with all reasonable inferences to be drawn therefrom, it fairly tends to prove appellee's right to recover under her said declaration., Chicago City Ry.Co. vs Wartensen 198 Ill. 511; C & E I R R Co vs Sendaker 223 Ill 395 - 401.

In our opinion, the evidence with the reasonable inferences to be drawn therefrom, fairly tends to prove appellee's case, and the court did not err in refusing to direct a verdict.





It is next contended by appellant that the verdict is against the manifest weight of the evidence. In this connection it is insisted by counsel for appellant, first: That the record discloses that appellee was not in the exercise of due care for her own safety; and second, that said parties were engaged in a common enterprise and that the negligence of appellant, if he were negligent, would bar a right of recovery on the part of appellee.

The evidence in this case with reference to how the accident occurred, is confined to the testimony of appellee and her friend, Miss Lang.

Appellee testified that: "Just before the collision I was speaking to Miss Lang, I was not in conversation with my brother. Neither was Miss Lang in conversation with my brother. We passed a car shortly before the collision. I don't know how far we ran after passing that car before the collision. We ran just a short distance and turned to the side to pass this car, that is, another car, not the one we just passed, it was another car ahead of us. I just seen something coming----I don't know what it was----I closed my eyes----that is all I know about it. There was a collision. Our car was traveling, by best judgment, twenty-five to twenty-eight miles. When we started to turn out to pass this car ahead of us we were close to it, we had overtaken the car ahead of us, had caught up with it; at that time I didn't see anything ahead of us in the road."

Miss Lang corroborated appellee with reference to the speed of the car and in the fact that she was conversing with appellee, but that appellant was taking no part therein. She testified: "Before we passed the first car we were driving to the right side of the road there was another car ahead of us. After he swung back in he was about twelve feet from the second car, as near as I could judge."

We would not be warranted from the foregoing evidence,





in holding as a matter of law that appellee was guilty of negligence which contributed to her injury. It is conceded by counsel for appellant that the record discloses that appellant was only driving about twenty-five to twenty-eight miles per hour at the time in question, and the testimony of the two witnesses is to the effect that nothing was being said by appellant with reference to driving around the car ahead of him, and that immediately upon his turning to the left the collision occurred. It was for the jury to say whether under those circumstances appellee was guilty of negligence contributing to her injury.

In *Stack vs The East St. Louis and Suburban Ry. Co.*, 245 Ill. 308, the supreme court in discussing a question of due care on the part of a plaintiff in a personal injury case, at page 310, says: "Whether the evidence tends to prove such care is a question of law, which a court can determine adversely to the plaintiff only when no other conclusion can reasonably be drawn from uncontradicted facts and from the evidence favorable to the plaintiff. There is no rule of law which prescribes any particular act to be done or omitted by a person who finds himself in a place of danger. In the variety of circumstances which constantly arise it is impossible to announce such a rule. The only requirement of the law is that the conduct of the person involved shall be consistent with what a man of ordinary prudence would do under like circumstances. Courts can lay down no precise rule of action to be observed by a man who, passing behind a street car, finds himself suddenly confronted, without warning, by a rapidly moving car or other vehicle. If, momentarily paralyzed or confused by the imminent danger, he does nothing, or takes a step or two in the wrong direction, and a collision results, it cannot be said, as a matter of law, that he acted in a manner different from that which might have been expected from a man of ordinary prudence."





The other proposition made by counsel for appellants is that said parties were engaged in a common enterprise, namely, the making of the trip to Springfield by automobile to attend the State Fair. Counsel for appellant have cited a large number of cases which they contend support this theory of their case. An examination of these cases will disclose that the facts involved in the cases cited were different from the facts in this case.

In this case, the evidence tends to show that appellant, some week or more prior to the accident, had invited Miss Lang to accompany him to Springfield, and that he had about the same time invited appellee to accompany him. The evidence tends to show that thereafter appellee and Miss Lang made plans with reference to their trip. We are of the opinion, however, that the jury were warranted in finding that the trip was proposed by appellant, and that appellee and Miss Lang were invited to accompany him. The automobile belonged to appellant, he was in control of the same, and there is no evidence in the record to the effect that either appellee or Miss Lang had anything whatever to do with the operation of said automobile. This being true, appellant's negligence, if he were negligent (and that seems to be conceded), could not be imputed to appellee.

In *Lasley vs Crawford*, 228 Ill.App.590, in discussing a question of this character, the court at page 596 says: "Whether Lasley was riding in the automobile at Crawford's invitation, expressly implied, was a question for the jury, and we are unable to say that their verdict on this phase of the case is contrary to the evidence, while the evidence is conflicting on the question whether Crawford expressly invited Lasley to ride with him, it seems to us, under the facts and circumstances disclosed, that the jury were fully warranted in finding that Lasley was riding in the automobile at Crawford's implied invitation at least and as his guest.





And we do not think that there is any merit in counsel's further contention that plaintiff cannot recover against Crawford because at the time of the accident Lasley and Crawford were engaged in a "joint enterprise". (Huddy on Automobile, 5th. ed., sec. 682. Jacobs vs Jacobs, 141 La. 272, 285; Roy vs Kirn, 208 Mich. 571-584; Hemington vs Hemington, 221 Mich. 206; 190 N.W. 683-684; Wilmes vs Fournier, 111 Misc. 9; 180 N.Y. N.Y. /supp. 660.) In the Jacobs case, cited with approval in Roy vs Kirn, it is said: One who invites another to ride with him as his guest in an automobile is not absolved from responsibility for negligence or imprudence merely because he is performing a gratuitous service or favor to his guest. In the Hemington case, decided by the Supreme Court of Michigan, December, 1932, it is said: "We find no testimony supporting the claim that plaintiff and defendant were engaged in a joint undertaking or common venture.\*\*\*\*\*. The defendant wanted company, and, therefore, invited her mother to accompany her. This constituted plaintiff a guest of defendant and brings the case within the rule relative to driver and guest. And it seems clear to us under the facts and circumstances disclosed in the instant case that Lasley at and immediately before the time of the accident was not himself guilty of any negligence contributing to his injuries and death."

We are therefore of the opinion and hold that the jury were warranted in finding that appellee was the invited guest of her brother, and that they were not engaged in a "joint enterprise" at the time of the accident in question.

It is next contended by appellant that the court erred in its rulings on the instructions. No instructions were given on the part of appellee. Appellant tendered twelve instructions, six of which were given and six refused. We have examined the refused instructions and also the instructions that were given and are of the



2. 2. 2.

opinion that the instructions given fully covered appellant's theory of the case so far as his theory was in keeping with the law.

We therefore hold that the court did not err in its ruling on the instructions.

No complaint is made of the size of the verdict.

Finding no reversible error in the record the judgment of the trial court will be affirmed.

JUDGMENT AFFIRMED.

Not to be reported .





3936a

FILED

JUL 7 1924

Robert R. Day  
CLERK OF THE DISTRICT COURT  
FOURTH DISTRICT OF ILLINOIS

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

MARCH TERM A. D. 1924.

234 I.A. 651

Term No. 34

Agenda No. 4.

GEORGE B. SPRINGMAN,  
Appellant,

-vs-

HENRY BALSTER, Trustee,  
Appellee.

APPEAL FROM

ALTON CITY

COURT.

OPINION BY BARRY P. J.

E Ross McPherson borrowed \$3,000.00 from appellant on March 26, 1921 and to secure the payment thereof gave him a chattel mortgage on certain specific articles of personal property and "All the electrical fixtures and supply stock, all the plumbing, heating and tin-work stock located in the building known as \_\_\_\_\_." While the mortgage was executed on the above mentioned date it was not acknowledged until May 9th, 1921 and was filed for record on the following day. The record discloses that the mortgagor subsequently purchased a large amount of stock and sales were made from day to day in the regular course of business with the knowledge and consent of appellant who did not require the mortgagor to pay him any part of the proceeds derived from such sales.

Appellant testified that he heard that McPherson had been losing money heavily; that he was gambling and getting in bad financially; that he was becoming involved; that he owed a large amount; that his accounts were in bad shape;



11

• • • • •

• • • • •

• • • • •

• • • • •

• • • • •

• • • • •

• • • • •

• • • • •

• • • • •

• • • • •

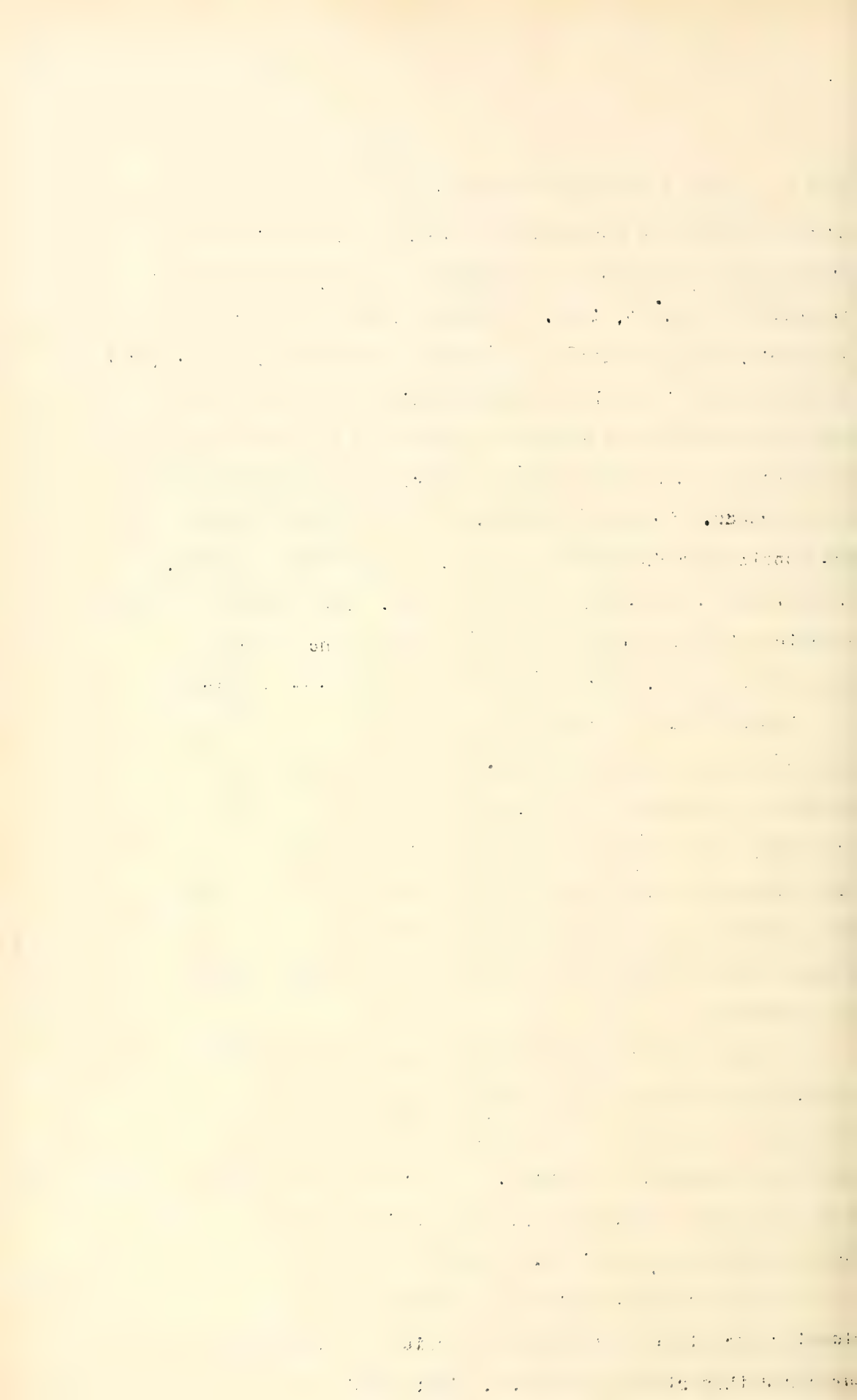
• • • • •

that he examined McPherson's books; that knowing he had lost as much as he had and squandered so much he thought it best to protect himself and he took possession of all of McPherson's property on Jan. 24, 1922. Thereupon McPherson went into bankruptcy and appellee was appointed his trustee. The parties then agreed that appellant should sell all of the property and that their rights should be determined in some appropriate proceeding in case they could not agree upon a division of the proceeds. The sum of \$2521.00 was realized from the sale and appellant conceded that appellee was entitled to \$512.00 thereof and that amount was paid to him. The specific articles described in the mortgage sold for \$200.00 and appellee makes no claim for that sum. That left \$1809.00 in dispute.

Appellee sued in trover on the theory that appellant had received an unlawful preference and that there was a fraudulent transfer of a large part of the bankrupt's property; that claims of more than \$10,000.00 had been filed and allowed and there was only about \$2500.00 to pay the same. The general issue was pleaded and a jury waived. The court found the issues in favor of appellee and rendered judgment for \$1809.00.

The chattel mortgage did not purport to cover after-acquired property and gave appellant no authority to take possession of any stock other than such as was on hand at the time the mortgage was executed. The evidence is very unsatisfactory as to what stock, if any, was owned by McPherson at the time the mortgage was given. Appellant testified that the money he loaned was used later to purchase a stock of plumbing and electrical goods. He said that McPherson had not purchased this stock up to March 26th; that is, not the general stock; he had been doing some work around town and had bought





from the Alton Plumbing & Heating Co. for specific jobs and may have had a few things on hand. The evidence is to the effect that a large amount of stock was purchased after the date of the mortgage and before appellant took possession; that the stock was being sold from day to day and replenished from time to time.

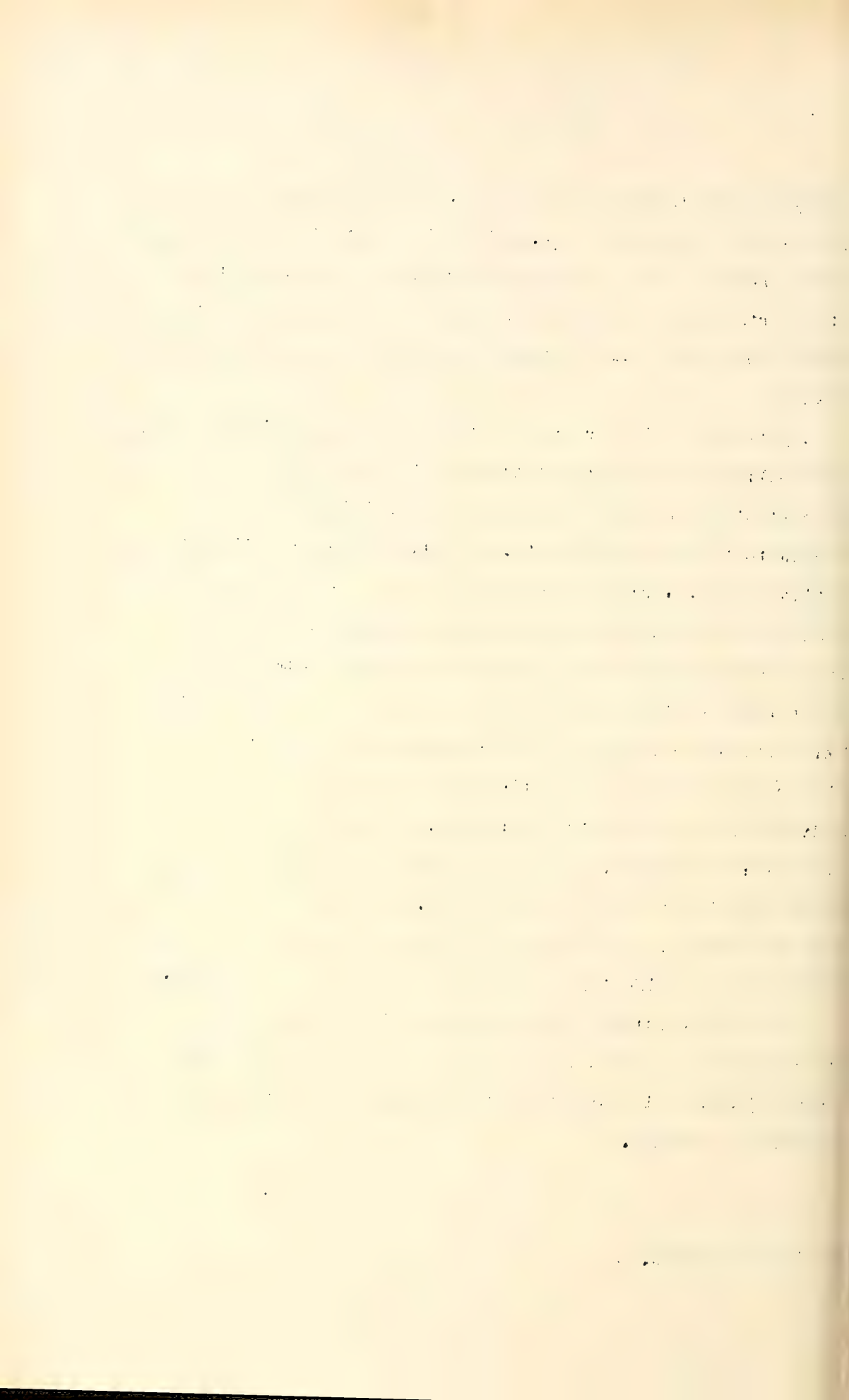
Appellant was in possession of all of McPherson's property when appellee was appointed trustee. It was later sold by appellant who knew that appellee was claiming that it belonged to the bankrupt estate. Appellant made no effort to identify any particular property as being a part of the stock on hand at the time the mortgage was executed. He had no lien on any property that was not included in the mortgage. It is very evident that he took possession of a large amount of property not covered by his mortgage at a time when he had reasonable cause to believe that McPherson was insolvent and that the transfer would result in giving him an unlawful preference. In our opinion it was up to appellant to identify the stock that was on hand, if any, at the time he took the mortgage. We cannot say that the conclusion of the trial court is manifestly against the weight of the evidence.

We have carefully considered all of the contentions and arguments of counsel for appellant and are of the opinion that the judgment is supported by the law and the evidence and must be affirmed.

AFFIRMED.

NOT TO BE REPORTED.





3937a

FILED

STATE OF ILLINOIS  
APPELLATE COURT  
4TH DISTRICT

JUL 7 1924

Robert B. Roe  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

234 I.A. 651

MARCH TERM A. D. 1924

TERM NO. 66.

Agendas No. 55

|                      |   |                 |
|----------------------|---|-----------------|
| BROCK MOTOR CAR CO., | : |                 |
| Appellant,           | : |                 |
| -vs-                 | : | APPEAL FROM     |
| CHARLES SHARNOSKI,   | : | CITY COURT OF   |
| Appellee.            | : | EAST ST. LOUIS. |

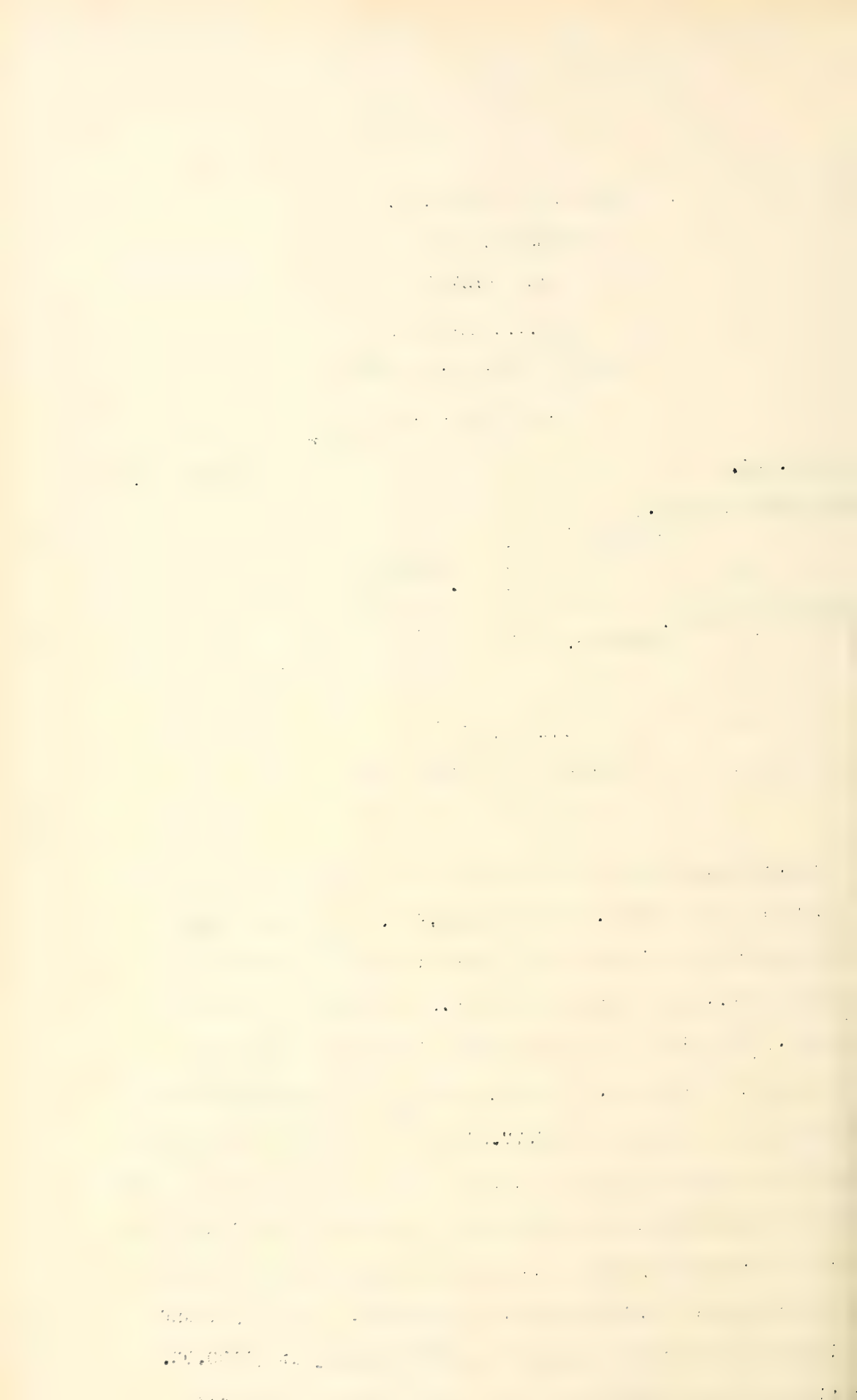
OPINION BY BARRY, P.J.

Appellee purchased an automobile from appellant for which he agreed to pay \$2652.10. He paid \$400.00 in cash, turned in his old car at \$700.00 and gave his note for \$1553.10 payable in four installments of \$388.27 secured by chattel mortgage. He failed to pay the first installment and the mortgage was foreclosed. After crediting the amount realized in the sale there was a balance of \$977.26 due on the note. Appellant brought this suit to recover that balance. Appellee filed a plea of set off for \$1100.00 on the theory that he had rescinded the contract because of false representations and breach of warranty and was entitled to recover what he had paid. The jury found the issues in his favor and assessed his damages at \$1100.00. A motion for new trial was overruled and judgment rendered.

When a contract is entire and not divisible, the

-1-





right to rescind, as a general rule, must be exercised in toto. The contract must stand in all its provisions or fall altogether. The very idea of rescinding a contract implies that what has been parted with shall be restored on both sides. That one party should be released from his part of the agreement, and that he should be excused from making the other party whole, does not seem agreeable to reason or justice. Hence the general rule is that a party who rescinds an agreement must place the opposite party in statu quo. 6 R. C. L. 936.

Generally speaking, the effect of rescission is to extinguish the contract. It is annihilated so effectually that in contemplation of law it has never had any existence, even for the purpose of being broken. Accordingly, it has been said that a lawful rescission of an agreement puts an end to it for all purposes, not only to preclude the recovery of the contract price, but also to prevent the recovery of damages for breach of the contract, ~~6~~ R. C. L. 942.

In the case at bar appellee paid \$400.00 in cash and turned in his old car at \$700.00 as part payment. The contract was entire and not divisible. If appellee rescinded the contract there was no longer any agreement on the part of appellant to take the old car at \$700.00. He offered no evidence as to the fair cash market value of that car and the record discloses that appellant had sold it for \$200.00. On appellee's theory of the case he was only entitled to be made whole. He should not be permitted to hold appellant for \$700.00 on account of the fact it had agreed to take the car at that price in part payment. Appellee had parted with his old car which may or may not have been worth \$700.00. If it was not worth more than \$200.00 the verdict and judgment, if permitted to stand, would give him a profit of \$500.00 on the transaction. The mere fact that appellant sold the car for \$200.00 does not establish that such was its fair cash market value.





The evidence is such that we do not feel warranted in holding that the jury was not justified in finding that appellee was entitled to and that he did rescind the contract. The verdict, however, is contrary to the law and the evidence in that the jury allowed appellee \$700.00 for the old car without any evidence as to its value. If appellee will file a remittitur of \$500.00 within ten days from the date of the filing of this opinion the judgment will be affirmed for \$600.00, each party to pay one-half the costs in this court, otherwise it will be reversed and the cause remanded.

AFFIRMED UPON FILING  
REMITTITUR OF \$500.00  
OTHERWISE REVERSED  
AND REMANDED.

NOT TO BE REPORTED.



I have been thinking of you very much lately  
and wondering how you are getting on.  
I hope you are well and happy.  
I have been very busy lately  
but I will write to you again soon.  
I am your affectionate friend,  
John Doe

I have been thinking of you very much lately  
and wondering how you are getting on.  
I hope you are well and happy.

I have been thinking of you very much lately  
and wondering how you are getting on.  
I hope you are well and happy.

39382

STATE OF ILLINOIS  
APPELLATE COURT  
4TH DISTRICT.

MARCH TERM A. D. 1924.

FILED

JUL 7 1924

Robert B. Rol  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

234 I.A. 651

Term No. 65

Agenda No. 46

JOSEPHINE J. WOOD, Gdn. &c.;  
Appellee,

-vs-

WOMAN'S BENEFIT ASSOCIATION  
OF THE MACCABEES,  
Appellant.

APPEAL FROM

CITY COURT OF

EAST ST. LOUIS.

OPINION BY BARRY, P. J.

Appellant issued a benefit certificate to Anna M. Lawler, who died within nine months thereafter. When sued for the amount of the insurance the defense was made that she died from complications arising directly or indirectly from pregnancy and from a surgical operation or medical treatment during such period for such ailment and condition or the consequences thereof, and that under the terms of her application and section 426 of the constitution and by-laws appellant was only required to pay to the beneficiary the amount of all the rates contributed by the deceased and that such rates amounted to seven dollars and fifty cents. The trial resulted in a verdict and judgment for \$1062.50.

Appellant states that the cause of the death of the insured is the only question raised on this appeal; that if it proved its





defense appellee was not entitled to recover and the court should have directed a verdict; that if it failed in its proof the judgment is right and should stand.

Mrs Lawler became ill about November 8, 1921 and her physician diagnosed her case as an inflammation of the ovaries and Fallopian tubes. She was taken to the hospital where the doctor operated on her to relieve the supposed conditions. Upon opening the abdomen it was found that she had an acute appendicitis, inflammation of the ovaries and Fallopian tubes with an abscess on the left side back of the uterus and an ectopic or unnatural pregnancy in the left Fallopian tube. The doctor removed the left tube and ovary and the appendix and the ~~patient~~ lived but two or three hours thereafter. He says that the said pregnancy was of about a month's duration and that there was no foetus. In his certificate of death he stated that the cause of death was ectopic gestation and salpingitis the secondary cause. In her proof appellee gave the cause of death as "appendicitis- ectopic pregnancy."

The doctor testified that the ectopic pregnancy had no connection with and did not cause the inflammation of the appendix or the tubes although he said that in his opinion the pregnancy and the salpingitis together caused her death. We find nothing more in the record bearing upon the question as to the cause of death. There is no evidence that death was occasioned by a surgical operation or medical treatment, nor is any claim now made that such was the fact. That being true the defense is narrowed to the single question as to whether she died from complications arising directly or indirectly from pregnancy.

The burden was upon appellant to prove that such was the cause of her death, Redmen's Fraternal Acc. Ass'n. vs. Rippey,



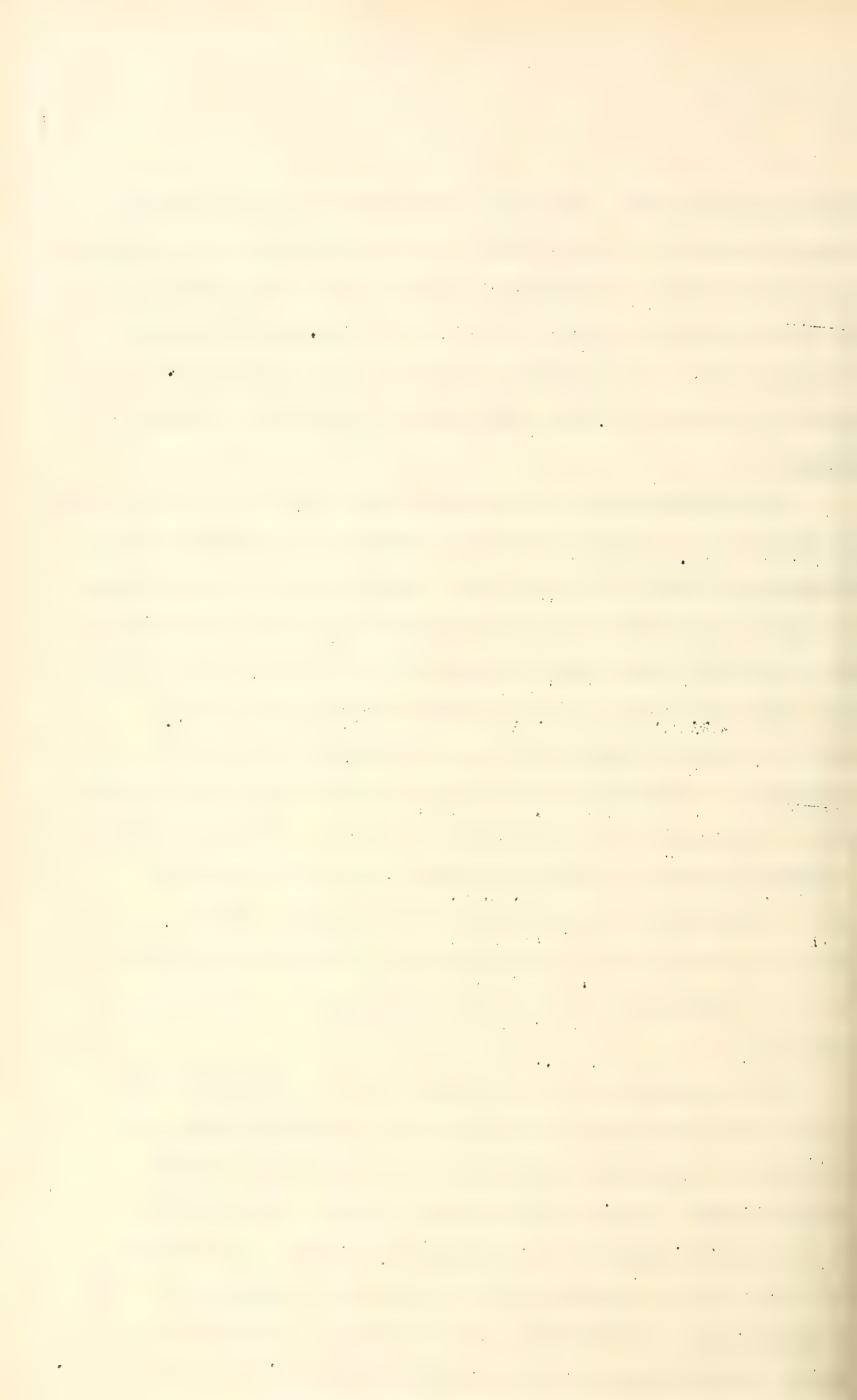


103 N. E. (Ind) 345, 50 L.R.A. (N.S.) 1006; Fellers vs Modern Woodmen, 165 N. W. (Iowa) 584. To make that proof it was necessary to show that the said cause was the proximate cause of her death. It is not enough to show a state of facts equally consistent with the claim that death was proximately due to an excepted cause as with some other cause, Fellers vs. Modern Woodmen, supra.

In the case at bar the excepted cause relied upon by appellant is death from complications arising directly or indirectly from pregnancy. There is no claim that death resulted from pregnancy in and of itself but only from complications arising therefrom. The doctor says that the pregnancy had no connection with and did not cause the other conditions found to exist. How, then, can it be said that she died from complications arising from pregnancy? True the doctor said that in his opinion the pregnancy and the salpingitis together caused her death but the reasonable conclusion from his entire testimony is that death was not due to any complications arising from pregnancy. While there were two causes of death neither of them was the excepted cause, - complications arising from pregnancy, - relied upon by appellant.

But if pregnancy in and of itself were an excepted cause and it were relied upon by appellant as a defense would it be permitted to escape liability by showing that death resulted from pregnancy and some other cause? In other words would it be sufficient to show that pregnancy contributed to her death? The most favorable construction of the medical testimony is that pregnancy was a contributing cause of death. In Miller vs. Mutual Ben Life Ins. Co. 31 Iowa, 216 it was held that, under revision avoiding a policy if the insured should "die by reason of intemperance from the use of intoxicating liquors"





its avoidance was not made out by showing that the intemperate use of liquor contributed to the death.

In Mutual L. Ins. Co. vs. Stibbe, 46 Md. 302 where the policy was to be void if the death of the insured should be "caused by the use of intoxicating drink", it was held that the drink must be the direct cause of death in order to avoid the policy, and that the same was not avoided if the insured died from cerebral congestion caused proximately by anxiety and remotely by drink.

In Holterhoff vs. Mutual Ben. L. Ins. Co. 5 Ohio Dec. Reprint 141, it was held that a provision avoiding a policy if the assured should die "by reason of intemperance from the use of intoxicating liquors" meant that, to exempt the insurer, the assured must have died from the direct use of intoxicating liquors; and that such use must have been the controlling or proximate cause of his death. In New York Life Ins. Co. vs. LeBoiteaux 5 Ohio, Dec. Reprint, 242 it was held under a similar provision, that, to warrant the defense that the assured's death was caused by intemperance, it must appear that the intemperance was the paramount and proximate cause of death, and not merely that it combined with other causes to produce death.

Under the authorities above cited appellant was not relieved from liability by simply showing that ectopic pregnancy was one of the causes of death or a contributing cause thereof. Even though all the facts are admitted or uncontradicted, yet, if it appears that either of two inferences may fairly and reasonably be drawn from those facts, the question must be determined by the jury, Mah See vs. North American Acc. Ins. Co. 26 A.L.R. (Cal) 123. In Allen vs. Travelers' Protective Ass'n 48 L.R.A. (N.S.) 600 at page 605, the court said:- "It is the exceptional case where the court can properly direct a verdict in favor of the





party having the burden of proof. And this is especially so where a vital fact is sought to be established only by inference from attending circumstances." We are of the opinion that under the evidence in this case the question as to whether it was proven that the insured died from complications arising from pregnancy was a question for the jury and the court did not err in refusing to direct a verdict for appellant.

We are also of the opinion that there is another reason why the judgment should be affirmed. Contracts of insurance, being entirely of the insurer's own making, are construed strictly against the insurer and liberally in favor of the insured, and where two interpretations, equally reasonable, are possible, that construction should be adopted which will enable the beneficiary to recover, *Zeman vs. North American Union* 263 Ill. 304; *Grand Legion Select Knights vs. Beaty*, 224 Ill. 346. The words employed in a contract of insurance are to be taken and understood in their plain, ordinary, usual and popular sense, rather than according to the meaning given them by lexicographers or persons skilled in the niceties of language, unless it appears that the parties intended they should be understood in a different sense, or unless it appears that, by a generally established usage of trade or business in respect to the subject matter, the words have acquired a peculiar sense, 32 C. J. 1150; 14 R. C. L. 925.

"The best construction is that which is made by viewing the subject of the contract as the mass of mankind would view it; for it may be safely assumed that such was the aspect in which the parties themselves viewed it. Accordingly it is a familiar rule, of constant application, that courts give effect to all written instruments according to the ordinary,





popular meaning of the terms employed, when nothing appears to show that they were used in a different sense, and no unreasonable or absurd consequences will result from doing so," 6 R.C.L.843. To the same <sup>effect</sup> ~~cases~~ are, Stettauer vs. Hamlin, 97 Ill. 312; Close vs. Brown, 230 Ill. 228; Wolf Schwill, 282 Ill. 189.

The provision relied upon by appellant to relieve it from liability is that if a member dies from complications arising directly or indirectly out of pregnancy, or the consequences thereof, either before or after giving birth. If the word "pregnancy" in the connection in which it is used, is to be taken and understood in its plain, ordinary, usual and popular sense as the above authorities hold there can be no escape from the conclusion that it must be construed as meaning a natural or uterine pregnancy. There can be no doubt but that it would be so understood by the great mass of mankind. An ectopic pregnancy is an unnatural condition that seldom occurs and from which no birth can possibly proceed. If not a disease at its inception it soon produces a diseased condition and is of such rare occurrence that it would violate all rules of construction to hold that such a pregnancy was within the contemplation of the parties at the time the contract of insurance was made.

The word "pregnancy" in its plain, ordinary and popular sense expresses the condition of a woman when a conception has taken place in the uterus. To express her condition when conception has otherwise occurred it is necessary to say "extra uterine pregnancy," "abdominal pregnancy," "ectopic pregnancy," or "unnatural pregnancy." In the bylaw in question we find the added words "either before or after giving birth" which clearly show, as we believe, that a natural pregnancy was meant, that is, one from which a birth





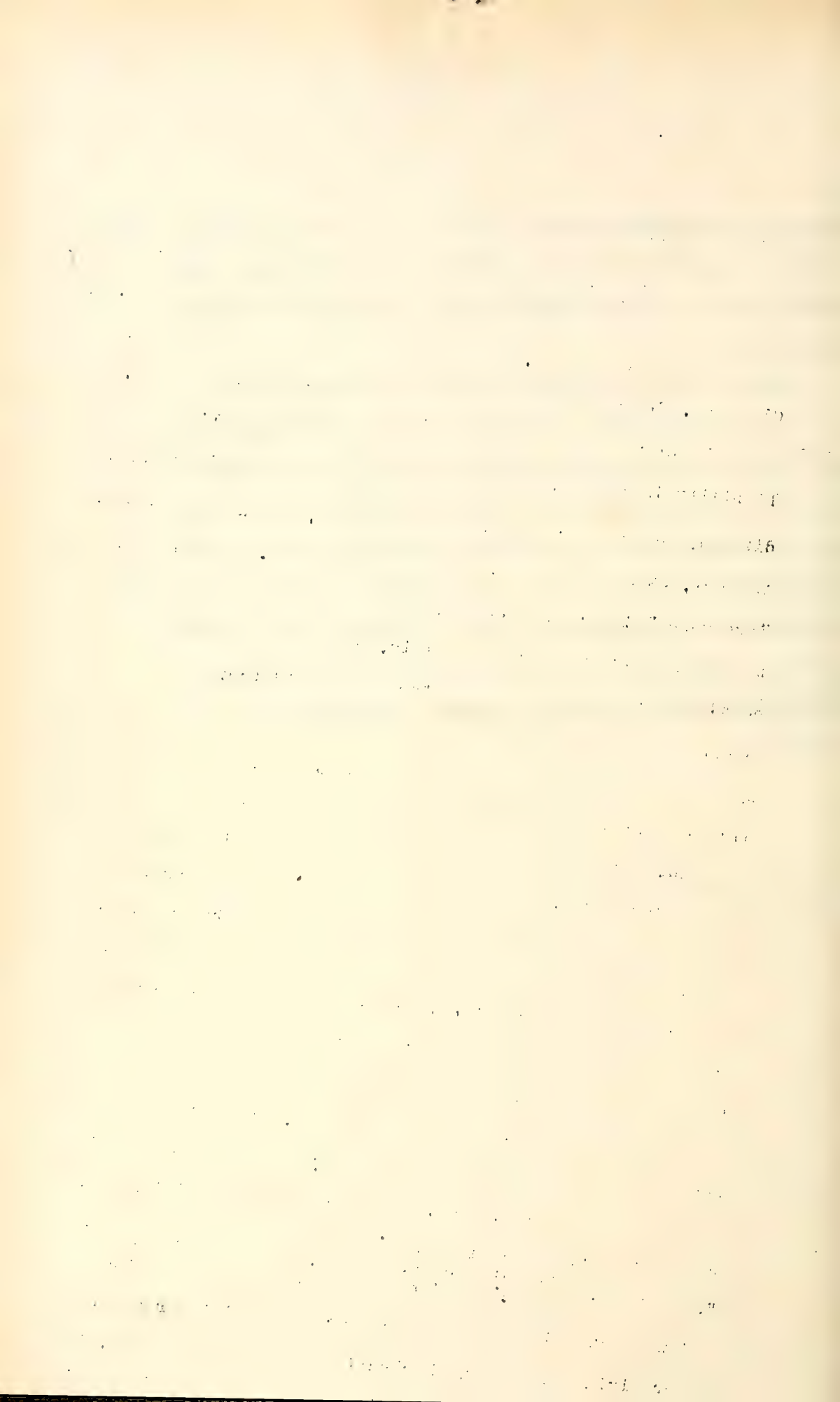
might be reasonably expected and not an unnatural condition which could not possible result in a giving of birth. The quoted words would be utterly meaningless if applied to an ectopic pregnancy.

While an ectopic pregnancy is very dangerous unless it is soon removed, yet, it is of such rare occurrence that the risk from the standpoint of the insurer is but slight. If appellant intended to relieve itself from liability in such cases it should have selected more appropriate language to express that intention. If a provision of an insurance contract is uncertain or ambiguous it will be construed most strongly in favor of the insured and against the insurer, Monahan vs. Fidelity Life Ins. Co. 242 Ill. <sup>488</sup> ~~486~~. The judgment is affirmed.

Affirmed.

NOT TO BE REPORTED IN FULL.





5939a

Term No. 2

Agends No. 51

IN THE  
APPELLATE COURT OF ILLINOIS,  
FOURTH DISTRICT.

FILED

JUL 7 1924

MARCH TERM, A. D. 1924.

Robert B. Roe  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

234 I.A. 652

|                                      |   |               |
|--------------------------------------|---|---------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | : |               |
| Defendant in Error,                  | : | ERROR TO THE  |
|                                      | : |               |
| -vs-                                 | : | PERRY COUNTY  |
|                                      | : |               |
| JOSEPH SKORCZWESKI,                  | : | COUNTY COURT. |
| Plaintiff in Error.                  | : |               |

OPINION by BOGGS, J.

Plaintiff in error, after signing a written waiver of trial by jury, and after being admonished by the court as to the effect of his plea, entered and persisted in a plea of guilty to an information which charged that, on the 28th day of February, 1923, at and within the County of Perry and State of Illinois, he " did unlawfully manufacture intoxicating liquor, against the l.w in such case made and provided, and against the peace and dignity of the same People of the State of Illinois."

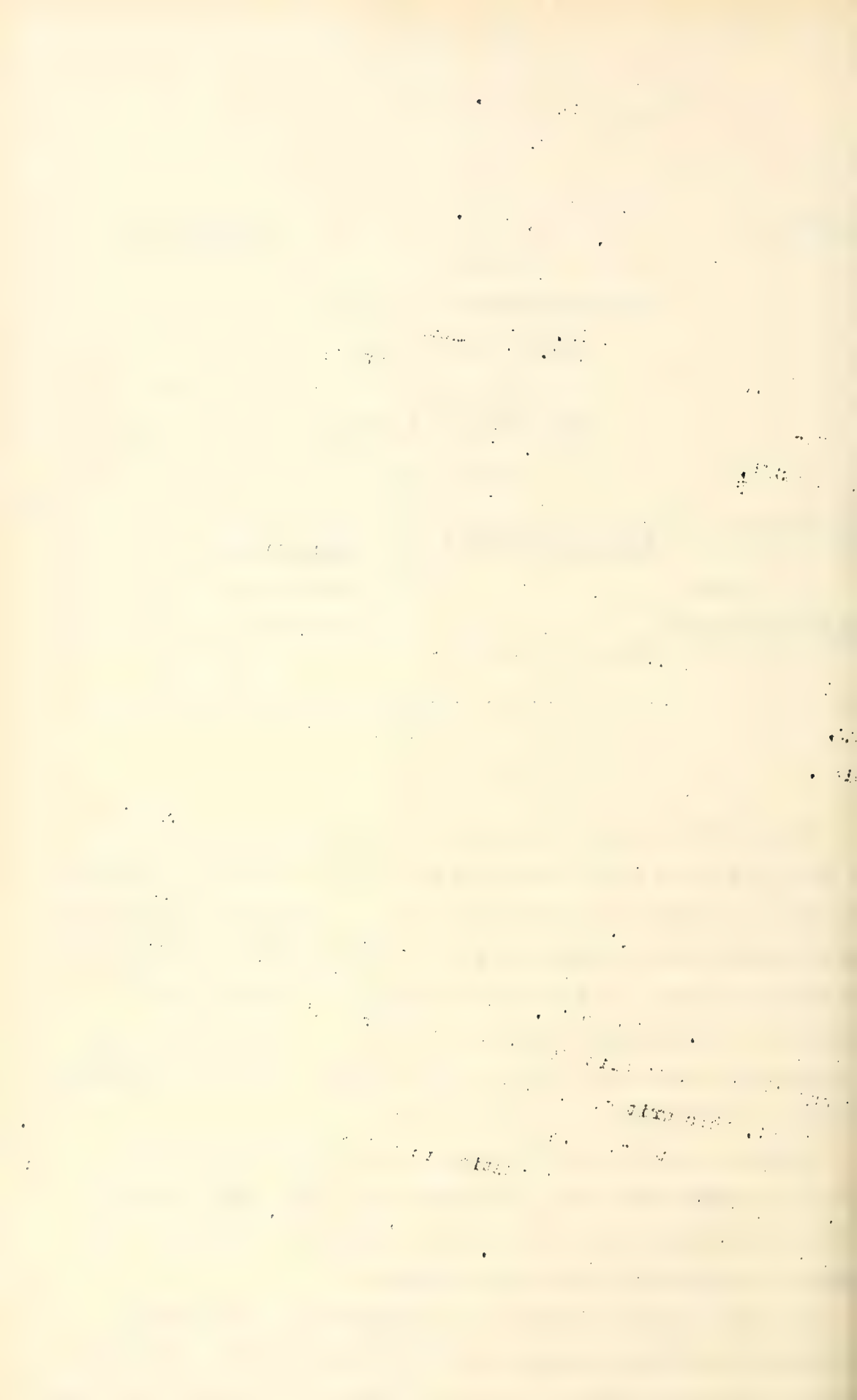
Judgment was rendered on said plea, and plaintiff in error was fined \$400.00 and costs, and committed to the county jail of Perry County until said fine and costs were paid. To reverse said judgment, this writ of error is prosecuted.

The only question raised by the assignment of errors is as to whether or not the information to which said plea of guilty was entered charged an offense against the laws of the State of Illinois.

Section 3 of chapter 43, Cahill's Statute, provides as follows:

"No person shall on or after the date when this Act goes into effect





into effect, manufacture, sell, barter, transport, deliver, furnish or possess any intoxicating liquor except as authorized in this Act, and all the provisions of this Act shall be liberally construed to the end that the use of intoxicating liquors as a beverage may be prevented."

Section 39 of said Act provides that it shall not be necessary in any information or indictment to include any defensive, negative averments, but it shall be sufficient to state that the act complained of was then and there prohibited and unlawful.

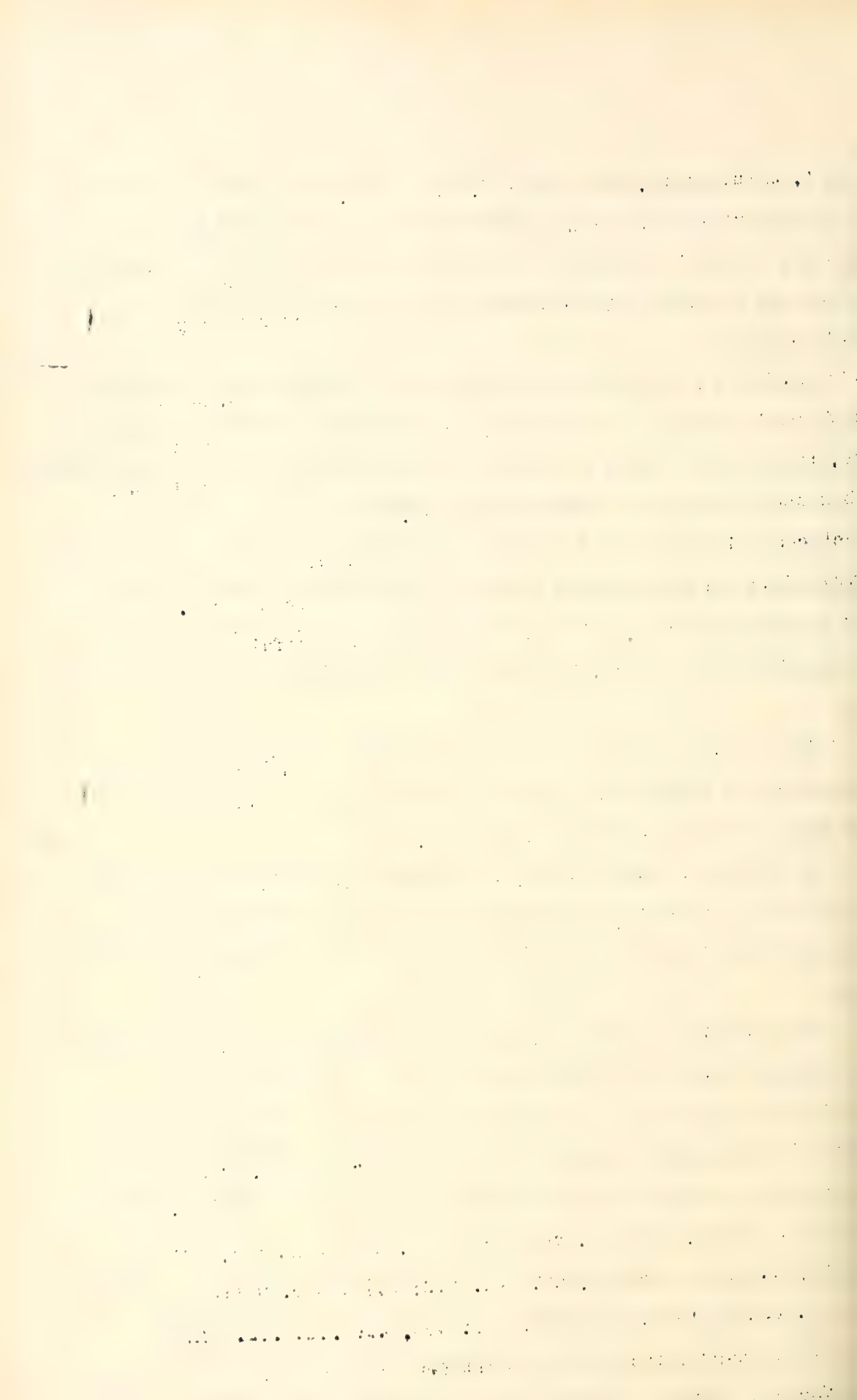
The act complained of in this case is the unlawful manufacture of intoxicating liquor, in violation of said statute. The information charges that the manufacturing was unlawful and in violation of the Act, and meets the requirements of said section 39.

This court had before it, at the October Term, 1923, informations of practically the same character as the information here involved. *People v. Smith*; *People v. Moseley*.

In *People v. Smith*, supra, the court in discussing the sufficiency of an information charging the unlawful possession of intoxicating liquor in violation of said statute, among other things says:

"Sections 3 and 39 of the Illinois Prohibition Act are the same as sections 3 and 32 of the National Act. The Federal courts are almost unanimous in holding that it is not necessary to include defensive negative averments in an indictment or information. The following are some of the decisions of the Circuit Court of Appeals: *Cabiale v. United States*, 276 Fed. 769; *Herine v. United States*, 276 Fed. 806; *Massey v. United States*, 281 Fed. 293; *Millich v. United States*, 282 Fed. 604; *Rulovitch v. United States*, 286 Fed. 315. In the *Rulovitch* case, supra, the Supreme Court denied a writ of certiorari. There are other cases, both State and Federal, to the same effect."





Following the construction placed on said statute by us in People v. Moseley and People v. Smith, supra, we hold said information to be sufficient, and that the trial court was warranted in entering judgment on plaintiff in error's plea of guilty.

For the reasons above set forth, the judgment of the trial court will be affirmed.

Judgment affirmed.

NOT TO BE REPORTED.



... of the ...  
... of the ...  
... of the ...  
... of the ...  
... of the ...  
... of the ...  
... of the ...  
... of the ...  
... of the ...  
... of the ...

... of the ...

... of the ...

29 Hda

Term No. 3.

Agenda No. 52.

In The  
APPELLATE COURT OF ILLINOIS,  
FOURTH DISTRICT.

FILED

JUL 7 1924

MARCH TERM, A. D. 1924.

Robert B. Roe  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

234 I.A. 652

|                                      |   |               |
|--------------------------------------|---|---------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, | : |               |
| Defendant in Error,                  | : | Error to the  |
|                                      | : |               |
| -VS-                                 | : | Perry County  |
|                                      | : |               |
| JOSEPH SKORCZEWSKI,                  | : | County Court. |
| Plaintiff in Error.                  | : |               |

OPINION BY BOGGS, J.

Plaintiff in error, after signing a written waiver of trial by jury, and after being admonished by the court as to the effect of his plea, entered and persisted in a plea of guilty to an information which charged that, on the 28th day of February, 1923, at and within the County of Perry and State of Illinois, he "did then and there unlawfully have and possess intoxicating liquor, said possession of intoxicating liquor being then and there prohibited by law, contrary to the statute and against the peace and dignity of the same People of the State of Illinois."

Judgment was rendered on said plea, and plaintiff in error was fined \$300.00 and costs, and committed to the county jail of Perry County until said fine and costs were paid. This writ of error is prosecuted to reverse said judgment.





The only question raised by the assignment of errors is as to whether or not the information to which said plea of guilty was entered charges an offense against the laws of the State of Illinois.

This court has heretofore, at a previous term, had before it informations in practically the same language as the one here under consideration, and in each of said cases, such informations have been held sufficient. *People v. Smith*, and *People v. Mosely*, both decided at the October Term, 1925.

In *People v. Smith*, *supra*, this court in discussing an information of the character here involved, said:

"Sections 3 and 39 of the Illinois Prohibition Act are the same as sections 3 and 32 of the National Act. The Federal courts are almost unanimous in holding that it is not necessary to include defensive negative averments in an indictment or information. The following are some of the decisions of the Circuit Court of Appeals: *Cabiale v. United States*, 276 Fed. 769; *Herine v. United States*, 276 Fed. 806; *Massey v. United States*, 281 Fed. 63; *Millick v. United States*, 282 Fed. 604; *Rulovitch v. United States*, 286 Fed. 315. In the *Rulovitch* case, *supra*, the Supreme Court denied a writ of certiorari. There are other cases, both State and Federal, to the same effect."

So far as we are advised, the Supreme Court has not directly passed on the sufficiency of an information in the language of the one here under consideration. The sufficiency of an information of practically the same character as the one here involved was sought to be raised in *People v. Castree*, 311 Ill. 392-407. No motion to quash had been made, and as the written motion in arrest of judgment and the assignments of error did not raise the sufficiency of the information, the court held that that





question was not before it for determination.

In this case, no motion to quash the information or motion in arrest of judgment was made in the lower court. Therefore, the only question for our determination is whether the information charges an offense against the laws of the State.. *Klawanski v. People*, 218 Ill. 481. Following *People v. Mosely* and *People v. Smith*, *supra*, we hold that it does, and that the information is sufficient.

For the reasons above set forth, the judgment of the trial court will be affirmed.

Judgment affirmed.

NOT TO BE REPORTED.



1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 2676, 2677, 2678, 26

394 / a

Term No. 19

Agenda No. 33

In The  
APPELLATE COURT OF ILLINOIS,  
FOURTH DISTRICT.

MARCH TERM, A.D. 1924.

FILED

JUL 7 1924

Robert B. Roe  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

THE PEOPLE OF THE STATE OF  
ILLINOIS,

Defendant in Error,

-vs-

JAKE INGRAM and HARVEY  
INGRAM,

Plaintiffs in Error.

234 I.A. 652

Error to the  
Saline County  
County Court.

OPINION by BOGGS, J.

The State's Attorney of Saline County filed an information, consisting of three counts, in the County Court of said county against plaintiffs in error, hereinafter called defendants, and one Job Ingram. The first count charged the defendants with the unlawful possession of intoxicating liquor in violation of the Illinois Prohibition Act. The second count charged said parties with the unlawful manufacture of intoxicating liquor in violation of said Act, and the third count charged them with the possession of a still in violation of said Act.

Pleas of not guilty were entered by each of said parties, a trial was had and a verdict was returned, finding the said Jobe Ingram not guilty, and finding the defendants Jake Ingram and Harvey Ingram guilty on each of said three counts.

A motion for a new trial was made by said defendants, which



THE

OF

THE

THE

THE

THE

THE

THE

THE

THE

THE

THE

THE

THE

THE

THE

THE

THE

THE

was overruled as to the first and third counts of the information, and was allowed as to the second count, and the defendants were discharged as to said count. Judgment was rendered on said verdict, and each of said defendants was fined \$100.00 and costs on the first and third counts of said information respectively, and each was sentenced to the county jail for sixty days. To reverse said judgment, this writ of error is prosecuted.

Three grounds are relied upon in the argumnet of counsel for the defendants for a reversal of said judgment, viz: (1) That the information is insufficient and does not charge an offense against the laws of the state of Illinois; (2) that the verdict of the jury is not supported by the evidence; and (3) that the court erred in its instructions to the jury.

We had before us at the October Term, 1923, informations in practically the same form and character as the information here involved. People v. Moseley; People v. Smith. We there held said informations were sufficient, and that they charged an offense against the laws of the state, citing in support thereof the following cases decided by the Federal courts: Cabiale v. United States, 276 Fed. 769; Herine v. United States, 276 Fed. 806; Massey v. United States, 281 Fed. 293; Millich v. United States, 282 Fed. 604; Rulovitch v. United States, 286 Fed. 315.

Following the decisions in People v. Moseley and People v. Smith, and the Federal cases above cited, we hold the first and third counts of the information sufficient, and that they each charge an offense against the laws of this state. Cahill's Stat., Chap. 43, secs. 3 and 39.

On the proposition as to whether the verdict is supported by the evidence, the record discloses that on October 31, 1923, John Small, the sheriff of said county, together with John Hayden, Will Vaughn and Herbert Hawkins, deputy sheriffs, went to a slope mine owned and operated by Jobe Ingram, and there found a still



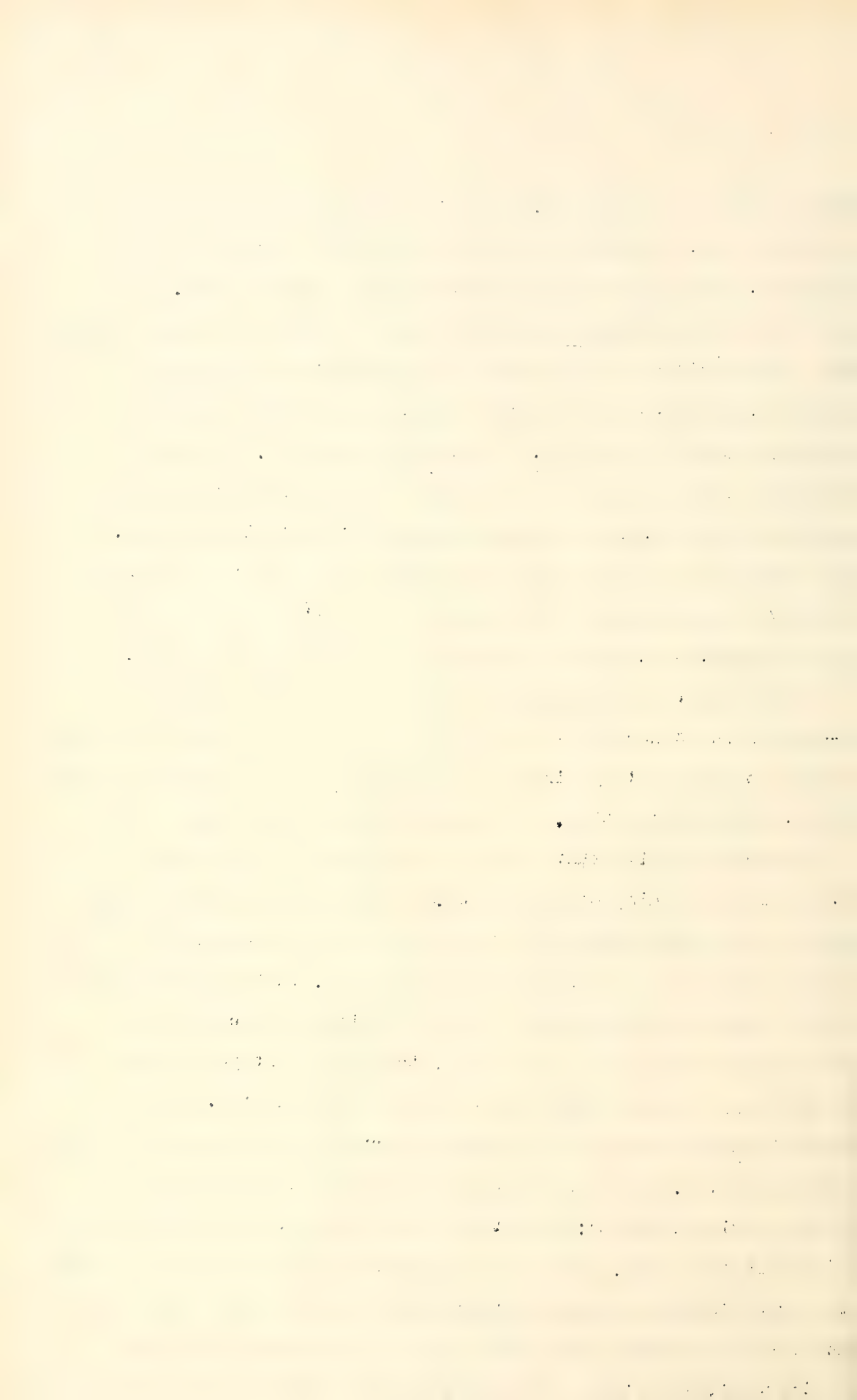


with the usual paraphernalia, together with some seven or eight barrels of amsh. There were also two 5-gallon containers and a gallon jug. The gallon jug was practically full of liquor, and there were two or three gallons of liquor in one of the other vessels. An analysis of said liquor developed that it contained 52.9% of grain alcohol or ethyl alcohol, being of the character ordinarily used in beverages. No question, however, is made by defendants with reference to the still or the liquor having been found, or that it showed the percentage of alcohol above stated. The contention of the defendants is that they were not and never had been in possession of the liquor or the still, and that they had no connection whatever with the transactions here involved.

There were two air-shafts to this mine, one old and one new one--both were connected with the main entrance and with each other, so that a person could go in said mine through either air-shaft and pass out through the other, or through the main entrance.

Hawkins testified that he was at the mine at about 8:30 o'clock in the evening of October 30, in company with John Hayden; that he and Hayden entered the mine by the new air-shaft, and while in there they heard voices further in the mine, in the workings; that he saw a light in the workings and saw parties pass across the entrance from one working to another; that Hayden stayed at the mine and that he, Hawkins, went back to town for the sheriff. Hawkins further testified that in about three-quarters of an hour he returned with the sheriff, and when they neared the new air-shaft they saw two men leaving the same; that these men passed within about thirty or forty feet of them, and that he believed the men were the defendants Harvey Ingram and Jake Ingram; that these men went toward the home of Harvey Ingram, who resided only about 500 feet from the new air shaft; that they followed them some forty or fifty feet, when a shot was fired; that when said parties left their vision an





had been gone possibly five minutes, they heard a motor start and an automobile left from near Harvey Ingram's house.

John Small, the shoriff, testified that he was acquainted with the defendants and had known them for several years; that on the evening of October 30 he went with Mr. Hawkins to said mine, and when they got within about 75 feet of the air-shaft, they saw a couple of fellows walking toward the house; that they moved up a little and "some fellow shot and we dropped on the ground and some of the boys shot three or four shots and those fellows shot again. After the shots were fired by one of the men they broke and run. They run toward Mr. Harvey Ingram's house. We laid there pretty close to the ground for a little bit and watched and listened; they ran on down to the south-east of his house, got in a car and turned and drove on south and went out of sight." He further testified that in his best judgment said persons were the defendants, Harvey Ingram and Jake Ingram.

John Hayden testified that he was with the sheriff and Hawkins on the evening in question; that he "saw two parties leaving the new air shaft. I had not seen these men in the mine before. We did not see the men in the mine, we just heard talking. These men went toward Harvey's house, south of the mine. We followed them a little piece down there and some one of them fired a shot. .... A shot was fired from some one of our bunch, but not from me. They fired another shot and there was still some shooting from our side, then these fellows, whoever they were, run right on up toward Harvey's house, and I heard a noise like a door open and a light lit up in the house. .... A car backed out and drove off down there."

On the part of the defendants, the testimony is to the effect that they had not been in the old part of the mine where the still was found for several years; that they were not the owners of or in possession of said mine; that it belonged to their father; that on the evening in question the defendant Jake Ingram was at home.





that he went to bed about 7:30 in the evening and that he never left his home that night; that when he heard the shooting he got up and went out on the porch to see where the shooting was coming from, and then went back to bed, where he stayed the remainder of the night.

The defendant Harvey Ingram testified that on the evening of October 30, he was at Lloyd Potts' garage near Gaskins City; that he had left Harrisburg about 8 O'clock; that he reached Potts' garage about 8:30 or 9 o'clock; and remained there some twenty minutes; that he paid Potts a garage bill that evening; that he left Potts' about 9 o'clock, and went straight to his father's home; that this was about a mile and a half and that it took him about twenty-five minutes.

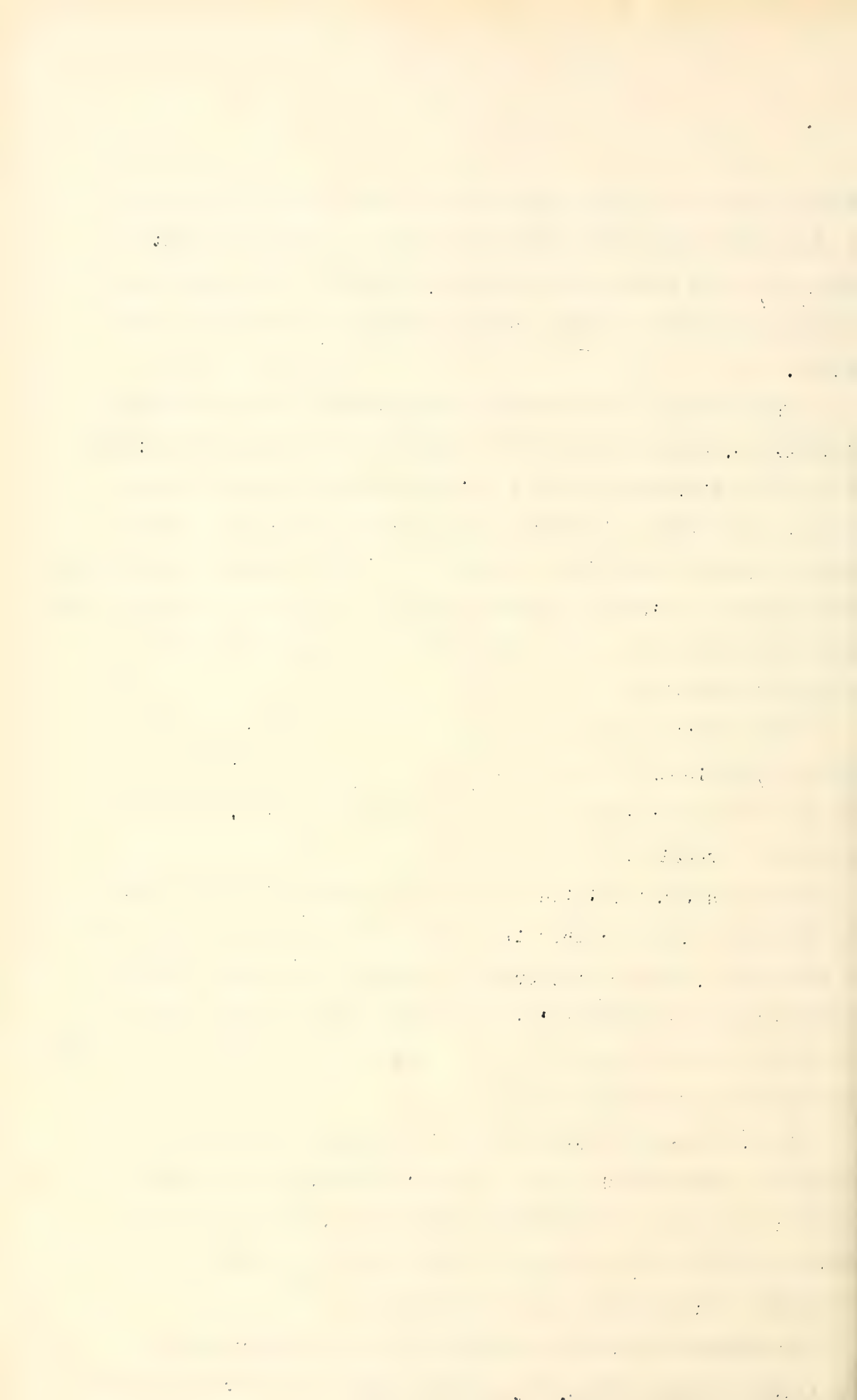
Lloyd Potts testified to having seen Harvey Ingram at his place of business at about nine o'clock on the evening of October 30, and that he paid him a garage bill at that time, for which he gave him a receipt.

Jobe Ingram testified that he had not been in the old mine for some three years; that it had been rented to a man by the name of Pentecost; that on the evening of October 30 he heard several shots fired about eight o'clock; that Jake Ingram was a member of his family and had been for the last three years; and that Jake had gone to bed early that evening.

Mrs. Ingram, the mother of said defendants, testified that she was at home on the evening of October 30; that Jake Ingram was in bed from seven to ten o'clock that night; that she heard the shooting and that Jake got up and went out to see where the shooting was coming from and then went back to bed.

One Theodore Horton testified that he saw Harvey Ingram on the night of October 30, at the public square in Harrisburg about eight o'clock in the evening, and walked with him to Lloyd Potts'





garage; that Ingram paid Potts a garage bill and got a receipt from him; that they were at Potts' until about nine o'clock and then went home.

On cross-examination, the witness Hayden testified he did not know who the parties were that he saw; that he did not know whether they went to Harvey Ingram's house, and that the automobile he saw left the road somewhere near the Ingram house. He further testified that the door he heard close was after the automobile had left.

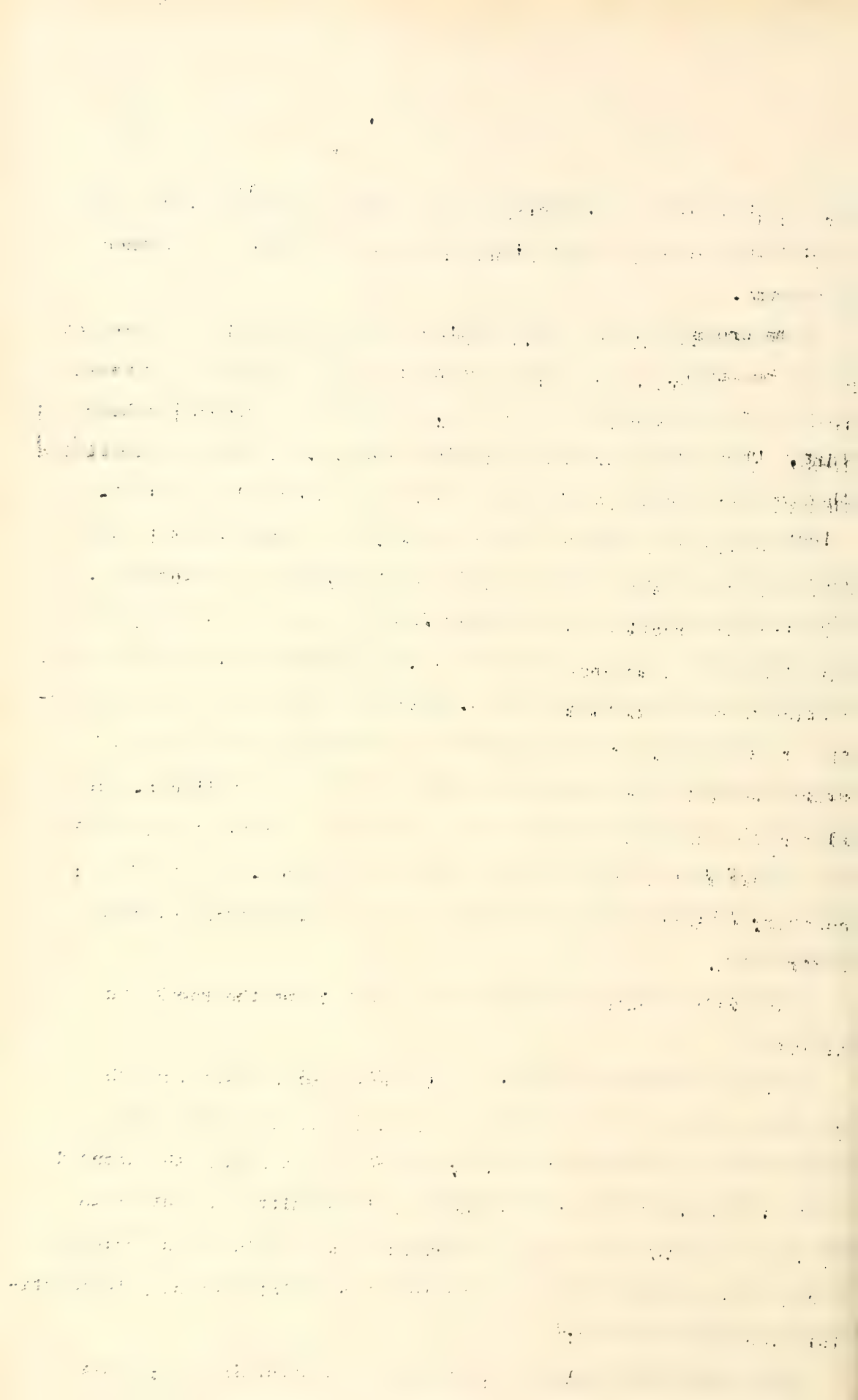
This being the state of the record, it was important that the court should have been accurate in its instructions to the jury. The first instruction given on behalf of the People was misleading. This instruction is abstract in form, and consists of a quotation of section 2 of the Prohibition Act. There was nothing in the instruction to inform the jury that it was an instruction based on the statute defining what should constitute intoxicating liquor. It also refers to section 45 of the Act, and this would also be misleading. This instruction should not have been given. We would not, however, be inclined to reverse the case for the giving of this instruction.

Instruction number three given on behalf of the People is as follows:

"You are instructed that the law does not require that the jury shall believe that every fact in a criminal case has been proved beyond a reasonable doubt, before they can find the accused guilty. The reasonable doubt the jury is permitted to entertain must be as to the guilt of the accused on the whole of the evidence and not as to any particular fact in the case not necessary to constitute the crime charged."

This instruction leaves to the jury to determine what facts were necessary to constitute the crime charged. This character of instruction has been condemned by our Supreme Court in *People v. Sullivan*.





296 Ill. 120; People v. Crammer, 298 Ill. 509; People v. Clark, 301 Ill. 428; People v. Gardner, 303 Ill. 204. In People v. Clark, supra, the court at page 435 says:

"A stock instruction defining reasonable doubt which contained the following sentence, 'The reasonable doubt that the jury are permitted to entertain to authorize an acquittal must be as to the guilt of the accused on the whole evidence, and not as to any particular fact in the case not material to the issue in the case,' was given. This instruction has been repeatedly condemned by this court, (People v. Crammer, 298 Ill. 509; People v. Seff, 296 id. 120;) and it seems strange that the practice of giving the instruction should not be discontinued in the criminal court of Cook county, where the same error has been repeatedly committed."

In People v. Gardner, Supra, the Court, on page 207 say:

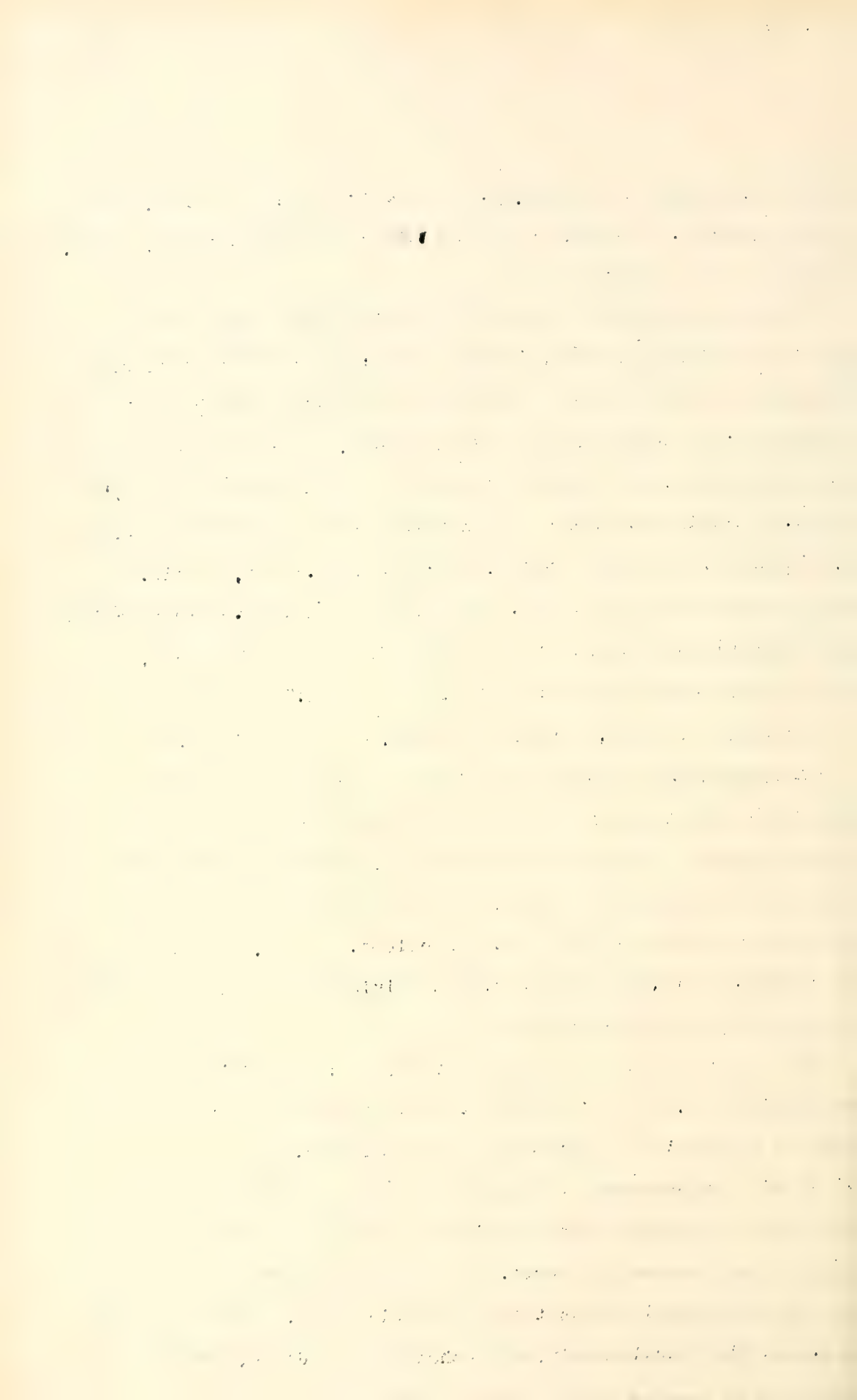
Instruction No. 20 given on behalf of the People was the instruction submitting to the jury the legal question as to what were the material facts or final essential elements of the crime with which the accused was charged, which instruction has been repeatedly condemned by this court. (People v. Cramer, 298 Ill 509; People v. Clark, 301 id. 428). The giving of this instruction in this case was reversible error.

We are of the opinion and hold that the court erred in giving instruction to them, as it leaves it to the jury to determine what facts are necessary to constitute the crime charged.

It is also contended by counsel for the defendants that the court erred in refusing the instruction tendered by the defendants and which was refused by the court. We have examined this instruction, and are of the opinion that the court did not err in refusing the same. The instructions given on behalf of the defendants were sufficient to present their theory of the case.

For the error in the giving of the first and third instruction





given on behalf of the People, the judgment of the trial court will be reversed and the cause will be remanded.

Reversed and Remanded.

NOT TO BE REPORTED.





3942a

Term No.. 26

Agenda No. 12

In The  
APPELLATE COURT OF ILLINOIS,  
FOURTH DISTRICT.

FILED

JUL 7 1924

MARCH TERM, A.D. 1924.

Robert S. Boggs  
CLERK OF THE  
FOURTH DISTRICT

234 I.A. 652

W.F. LOYD,

Plaintiff in Error, :

Error to the

-vs-

Circuit Court of  
Clay County.

CHARLES W. ROBERTSON,

Defendant in Error. :

OPINION by BOGGS, J.

Plaintiff in error, hereinafter called plaintiff, recovered a judgment against defendant in error, hereinafter called defendant, before a justice of the peace of Clay County, and on appeal to the Circuit Court, the verdict and judgment were in favor of the defendant. On appeal to this court, said cause was reversed on the ruling of the trial court on the instructions. On a retrial of said cause in the Circuil Court, a verdict was returned in favor of defendant. Judgment was rendered on the verdict, against plaintiff, in bar of action and for costs. To reverse said judgment, this writ of error is prosecuted.

The evidence on the part of the plaintiff tends to prove that he sold an automobile to defendant and his son, for the sum of \$225.00, and that a note was given therefor, signed by them. Said note as originally executed, drew interest from maturity. It was thereafter altered by the plaintiff, so as to draw interest from date. Plaintiff's evidence is further to the effect that this alteration was made with the knowledge and consent of the defendant.





The evidence on the part of the defendant is to the effect that said automobile was sold to his son: that the note given therefor, signed by defendant and his son, was altered without the knowledge or consent of defendant, and that he never thereafter ratified the same with knowledge of such alteration.

Two issues were raised on the trial: First, as to whether said automobile was sold to defendant, or to defendant and his son, or to defendant's son alone; and second, as to whether or not the alteration in controversy was made with the knowledge and consent of the defendant. The instructions of the court submitted these issues to the jury, and the jury evidently found for the defendant on both of them. In our opinion, the evidence is sufficient to support the verdict.

It was also contended by plaintiff that the trial court erred in permitting defendant to offer witnesses for the purpose of impeaching the plaintiff, before he had testified to anything material in connection with his case.

Some six or eight witnesses testified on the trial that they knew plaintiff's general reputation for truth and veracity in the neighborhood or vicinity in which he lived, and that it was bad. Plaintiff had testified in chief before this impeaching testimony was given, so, even on his own theory, this contention is without merit.

Plaintiff concedes that, if there was a material alteration of said note without the knowledge and consent of defendant and without his ratification, it would, so far as the note is concerned, bar a right of recovery thereon. He further contends, however, that even though said note had been altered, the defendant had purchased said automobile, and having so purchased the same, he would be liable therefor, without reference to the validity of the note.

The trial court gave an instruction to the jury, presenting this theory of the case. It therefore became a question for the





jury to say whether the evidence in the record supported plaintiff's contention. The jury found against him on said issue, and we are not disposed to disturb their verdict.

Finding no reversible error in the record, the judgment of the trial court will be affirmed.

Judgment affirmed.

NOT TO BE REPORTED.





In The  
APPELLATE COURT OF ILLINOIS,  
FOURTH DISTRICT.

FILED

JUL 7 1924

MARCH TERM, A. D. 1924.

Robert B. Roy  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

234 I.A. 652

THE PEOPLE OF THE STATE OF ILLINOIS,  
Defendants in Error,  
-vs-  
EARL LEO and MAE COLVIN,  
Plaintiffs in Error.

Error to the  
Effingham County  
County Court.

OPINION BY BOGGS, J.

Plaintiffs in error were tried and convicted in the County Court of Effingham County under an information, the first count of which charged that on the 30th day of October, 1923, at and within the County of Effingham, State of Illinois, while the same was then and there prohibition territory, they did "unlawfully possess intoxicating liquor in unlawful violation of a statute of Illinois entitled An Act to Restrict the Manufacture, Sale, Transportation, Possession and Use of Intoxicating Liquor, Aiding thereby, and Establishing Uniformity in State and Federal Laws in regard thereto, contrary to the statute, etc." The second count charged that plaintiffs in error, at and within the County of Effingham and State of Illinois, "did unlawfully transport intoxicating liquor in unlawful violation of the statute of the State of Illinois entitled An Act to Restrict the Manufacture, Sale, Transportation, Possession and Use of Intoxicating Liquor, Aiding thereby, and Establishing Uniformity in State and Federal Laws in Regard thereto, contrary





... ..

... ..

... ..

... ..

... ..

to the statute, etc."

It is contended on the part of plaintiffs in error that neither of said counts charges a criminal offense, and that by reason thereof the court erred in overruling the motion to quash the information and the motion in arrest of judgment. It is the contention of plaintiffs in error that, inasmuch as the possession of liquor may be lawful under the exceptions mentioned in the statute, it is not sufficient to simply aver that the defendant unlawfully possessed or unlawfully transported liquor in violation of the Prohibition Act.

Section 3 of said Act provides that no person shall possess or transport intoxicating liquors, except as authorized in the Act. Section 33 fixes the penalty for a violation of said Act at a fine or imprisonment, and section 39 provides that it shall not be necessary to include in the information any defensive, negative averments, but that it shall be sufficient to state that the act complained of was then and there prohibited and unlawful.

The information charges the offense in substantially the language used in the statute. This being true, it is sufficient, if the statute itself sufficiently describes the offense.

People v. Schreiber, 250 Ill. 345; People v. Coritz, 262 Ill. 514.

It is, however, assigned as error by counsel for plaintiffs in error that they "were denied the right to have the nature and cause of their accusation given them in the information in this case." It is for the Supreme Court and not for this court to determine whether the information was sufficient to apprise plaintiffs in error of the nature and cause of the accusation against them, as provided by section 6 of the Bill of Rights.





This question is for the Supreme Court. Lester v. People, 150 Ill. 406-426; Bratsch v. People, 195 Ill. 165-166; Dennison Cotton Co. v. Schermerhorn, 257 Ill. 128-130; Glos v. People, 259 Ill. 332-338; People v. Castree, 311 Ill. 392.

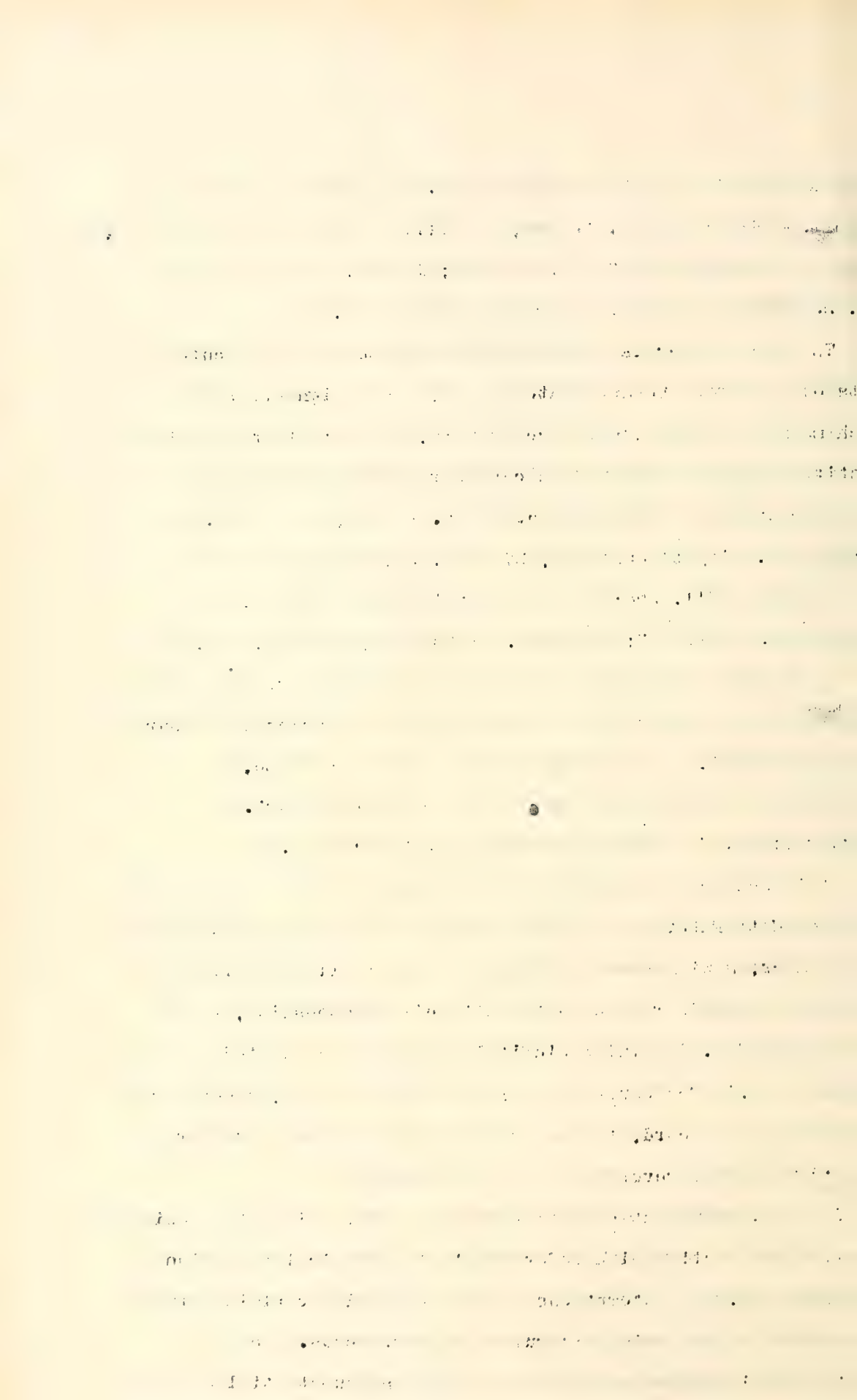
The law further is that parties who appeal or prosecute writs of error to the appellate courts, and assign errors which may be passed upon by such courts, are held to have waived constitutional questions which can be reviewed only by the supreme court. Miller Fire Ins. Co. v. People, 170 Ill. 474; Carr v. City of Sullivan, 222 Ill. 56; Town of Scott v. Artman, 237 Ill. 394; Vermilion Drainage District v. Schockey, 238 Ill. 237; People v. Viskniskki, 255 Ill. 384.

The law further is that if the plaintiffs in error have assigned and argued errors raising matters over which this court has jurisdiction, it is our duty to pass upon the same, instead of transferring the cause to the Supreme Court. Edwardsville v. Central Telephone Co., 302 Ill. 362.

It is next contended that the court erred in allowing the witnesses Matt Faber and Carl Faber to testify in rebuttal that Mrs. Plummer, a witness on behalf of the plaintiffs in error, stated to them: "Earl wanted to quit selling moonshine, but Mae (meaning Mrs. Colvin) wouldn't let him for she wanted the money he made." The court erred in this ruling, but, under the evidence in the record, the error was not of such a character as would warrant a reversal of the judgment.

It is further contended that the court erred in not allowing Dr. Walker to testify with reference to the physical condition of Mrs. Colvin. No attempt was made by counsel for plaintiffs in error to show wherein this ruling was erroneous. We are of the opinion and hold that there was no substantial error in the court's refusing to admit said testimony.





It is next contended by counsel for plaintiffs in error that the evidence is not sufficient to sustain the judgment in this case. Counsel representing the State practically ~~concedes~~ that as to Mrs. Colvin, the evidence is not sufficient to sustain the count charging the unlawful transportation of intoxicating liquor.

On the charge that the plaintiffs in error unlawfully possessed intoxicating liquor, the evidence in the record amply sustains the charge. It is contended, however, that Mrs. Colvin had rheumatism and that the liquid which was found in her home was alcohol rub, and was kept by her for use in treating her rheumatism. We are of the opinion, however, that the jury were fully warranted in finding that said liquor was unlawfully possessed, as the evidence tends to show that when the officers came to the home, the door was locked and before they could obtain admittance they had to break the door open. Before breaking open the door, one of the officers heard a sound coming from the house, like the breaking of glass. As soon as they gained admittance to the house, the officers met Mrs. Colvin coming up from the basement. On going to the basement, they found some broken bottles on the basement floor, and a large amount of liquid, which they estimated at from a gallon and a half to two gallons, and which the officers testified was white mule. They further testified that they gathered up a quantity of the same, and on having it tested, it tested something like 30% alcohol by volume.

On the count charging plaintiff in error with the unlawful transportation of intoxicating liquor, the evidence discloses that the officers were watching for plaintiff in error, Earl Leo; that when he saw them he speeded up the automobile in which he was riding, and when they reached him they found a bottle,





practically empty, which had the odor of moonshine whiskey; they also found that liquor had been spilled in the car and on the running-board of the same. We are of the opinion that the plaintiff in error's flight, considered in connection with the evidence of liquor in and about the automobile, was sufficient to warrant the jury in finding him guilty of the unlawful transportation of intoxicating liquor. At any rate, the evidence is such that we are not able to say that there is clearly a reasonable and well-founded doubt as to the guilt of the accused. We are therefore not warranted in interfering with the verdict of the jury on the ground that it is not supported by the evidence. *People v. McCabe*, 306 Ill. 183-187, citing and approving *People v. Shoop*, 288 Ill. 44; *People v. Byrnes*, 302 Ill. 404; *People v. Martin*, 304 Ill. 494.

It was also contended by the plaintiffs in error that the sentence was excessive. This assignment of error was not argued, and, under the rules of this court, it is taken as abandoned.

Mrs. Colvin was fined \$100.00 on each count of the information. The evidence does not support the count charging her with the unlawful transportation of intoxicating liquor. Therefore, as to said count, said cause is reversed and remanded as to the plaintiff in error, Mae Colvin. Otherwise, the judgment of the trial court will be affirmed.

Affirmed in part, and reversed and  
remanded in part.

NOT TO BE REPORTED.











additional count alleges among other things that "in consideration that the plaintiff would cut his timber and deliver it at a certain designated place on the bank of the Mississippi River in Mississippi County, state of Missouri, a large quantity of logs, to wit, all the logs from said timber which the plaintiff would deliver as aforesaid during the following fall and winter, and not less than, to wit, 100,000 feet, at a price to be agreed upon when the plaintiff should notify defendant of his readiness to deliver the said logs as aforesaid;" alleging price to be paid therefor and readiness to deliver, etc.

To said declaration, appellant filed the general issue, a plea of non est factum, sworn to, and the statute of frauds, based on section 4 of the Uniform Sales Act, Chapter 121a, Cahill's Statute.

Appellee replied to the plea of the statute of frauds, that "each and every one of the said several promises was an agreement or contract made in the state of Missouri and governed by the laws of the state of Missouri, and not a contract made in the state of Illinois."

To said replication, appellant filed a rejoinder, setting forth the following provision of the statute of Missouri with reference to the sale of goods:

"Sec. 2170. Contract for Sale of Goods--What Necessary to Make Valid.--No contract for the sale of goods, wares and merchandise for the price of thirty dollars or upwards shall be allowed to be good unless the buyer shall accept part of the goods so sold, and actually receive the same, or give something in earnest to bind the bargain, or in part payment, or unless some note or memorandum in writing be made of the bargain, and signed by the parties to be charged with such contract, or their





agents lawfully authorized. (R. S. 1909, Sec. 2784.)"

Issue was joined on said rejoinder, and a trial was had, resulting in a verdict and judgment in favor of appellee for the sum of \$1,650.00. To reverse said judgment, this appeal is prosecuted.

It is first contended on the part of appellant for a reversal of said judgment that the court erred in refusing to direct a verdict in his favor on the motion made by him at the close of appellee's evidence, and again at the close of all of the evidence. In support of said motion, counsel for appellant contends first that the evidence on the part of appellee fails to show any contract whatever between appellee and appellant for the sale of the logs or timber in question; and second, that the evidence wholly fails to show any contract in writing, or contract evidenced in writing, for the sale of the same.

The only written evidence offered on the part of appellee consists of an undated letter, written on the stationery of appellant and signed with typewriter "Chas. Dumm", and a second letter, dated February 14, 1921, addressed to appellee and signed "O. L. Bartlett, By E. C. Morrison, Mgr."

The first letter is as follows:

"S. M. Newcum, Charleston, Mo. Dear Sir: Your favor 13, Stating that you are putting out timber on the Mississippi River; glad to know this. You will let us know when you are ready for a scale. Prices will be the same as last year. Will call on you the first time I am thru your City. Yours truly,  
Chas. Dumm."

Appellee stated on cross-examination: "I received letter in September, 1920, I think. I am going entirely on the date of the letter. It has never been changed since I got it. I am sure this letter did not have reference to previous contract





that was filled.

"I had no other conversation with Dumm. Wrote a letter to him that he did not answer; only remember writing one letter; never received any answer. Put out part of logs in 1921, first part of the year. Had nearly all of them cut before the end of the year, before the end of 1920; worked on instructions from Mr. Dumm. This was all the conversation and this letter is all I had to go ahead and get these logs out. This was all contract that I claimed."

In other words, appellee bases his right to a recovery in this case upon the letter purporting to be signed by one Chas. Dumm. It is not contended by appellee that the letter signed, "O. L. Bartlett, by E. C. Morrison, Mgr.," constituted a contract, or that it was evidence thereof. The Morrison letter was written after the time appellee testifies he tendered the logs in question. The letter is quite long, and in substance is to the effect that appellant had not purchased any logs of appellee; that he realized the predicament appellee would be in if he could not dispose of his logs, and offered if appellee would make an attractive price on said logs, to purchase them. There is nothing in the letter, however, that could in any way be construed as tending to establish a contract between said parties.

The statute of frauds having been pleaded, it was necessary for appellee to prove his contract, either by a written contract signed by appellant or by some agent authorized by appellant to execute a contract for him, or there must have been some writing or writings signed by appellant, which, taken together, would establish such contract, or there must have been proof that appellant had accepted the whole or a part of the goods; or that he had given something "in earnest to bind the contract, or in part payment therefor." Cahill's Stat., Chap. 121a, sec. 4.





It is not contended by appellee that appellant received any of said logs or that he paid anything thereon. This being the state of the record, appellee has wholly failed to prove the contract set forth in the declaration. under the plea of the statute of frauds. *West v. Kennedy*, 220 App. 49; *Chicago M. R. Co. v. Jerome Trading Co.*, 218 App. 333; *Western M. Co. v. Hartman I. M. Co.*, 303 Ill. 479.

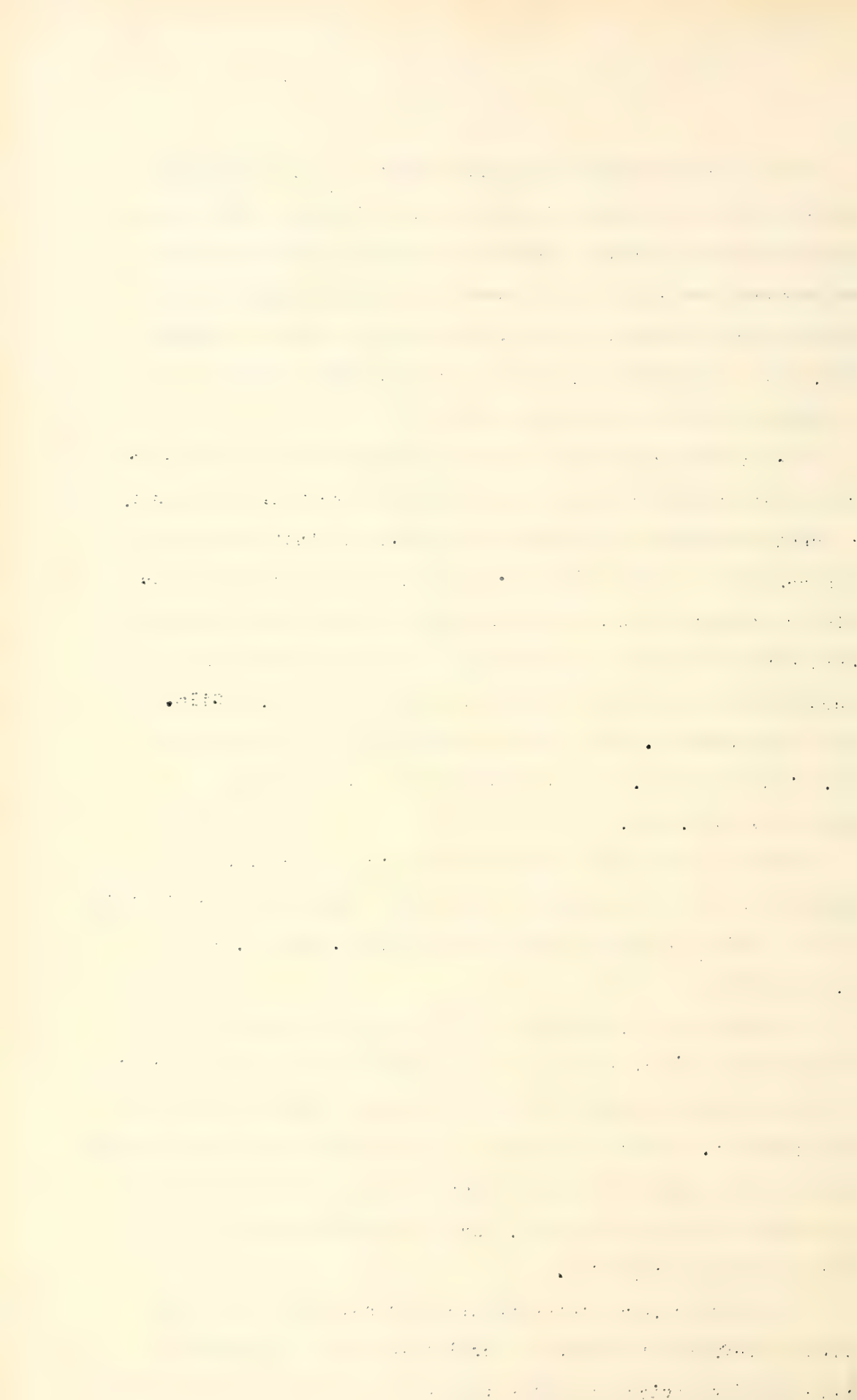
The writing signed by a party, necessary to take the case out of the statute of frauds, must contain everything necessary to show the contract between the parties, so that there is no necessity of parol proof of any terms or conditions of the sale or the intention of the parties, and where the contract is contained in more than one writing, parol proof should not be necessary to connect the writings. *Burk, v. Healey*, 2 Gilm. 614; *Hartenbower v. Uden*, 242 Ill. 434; *Ewell v. Hicks*, 238 Ill. 170; *Western M. Co. v. Hartman I. M. Co.*, supra, 483; 25 R. C. L. 680.

The law in Missouri with reference to this character of contract is, in its practical effect, the same as the law in this state. *Kelley v. Thuey*, 143 Mo. 442; *Hain v. Burton*, 118 Mo. App. 578.

It may also be observed in this connection that not only did appellee fail to prove a contract between him and appellant by written evidence, but the evidence wholly fails to prove an oral contract. There is nothing in the record proving or tending to prove the number of logs or feet of logs that appellant was to purchase, the kind of logs, when he was to take them, or the price to be paid therefor.

We are therefore of the opinion and hold that the court erred in refusing to direct a verdict in favor of appellant, there being no evidence in the record which, taken as true, with all the reasonable inferences to be drawn therefrom, fairly





tends to prove appellee's case.

Other errors are assigned on the record as to the giving of instructions and as to rulings on the evidence, but in our viwe of the case as above set forth, it is not necessary for us to pass on the same.

For the reasons above set forth, the judgment of the trial court will be reversed. The clerk will incorporate in the judgment the following finding of fact:

The record wholly fails to establish or prove a contract between appellant and appellee for the sale of the logs in question or any part thereof, either oral or written.

Judgment reversed, with finding of fact.

NOT TO BE REPORTED.



• ... of ... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

... ..

Term No. 32

Agenda No. 48.

In The  
APPELLATE COURT OF ILLINOIS,  
FOURTH DISTRICT.

FILED

JUL 7 1924

MARCH TERM, A. D. 1924.

Robert B. ...  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

234 I.A. 653

NELLEI HOLLAND,  
Appellee,

-vs-

EAST ST. LOUIS RAILWAY COMPANY,  
Appellant.

:  
:  
:  
:  
:  
:  
:

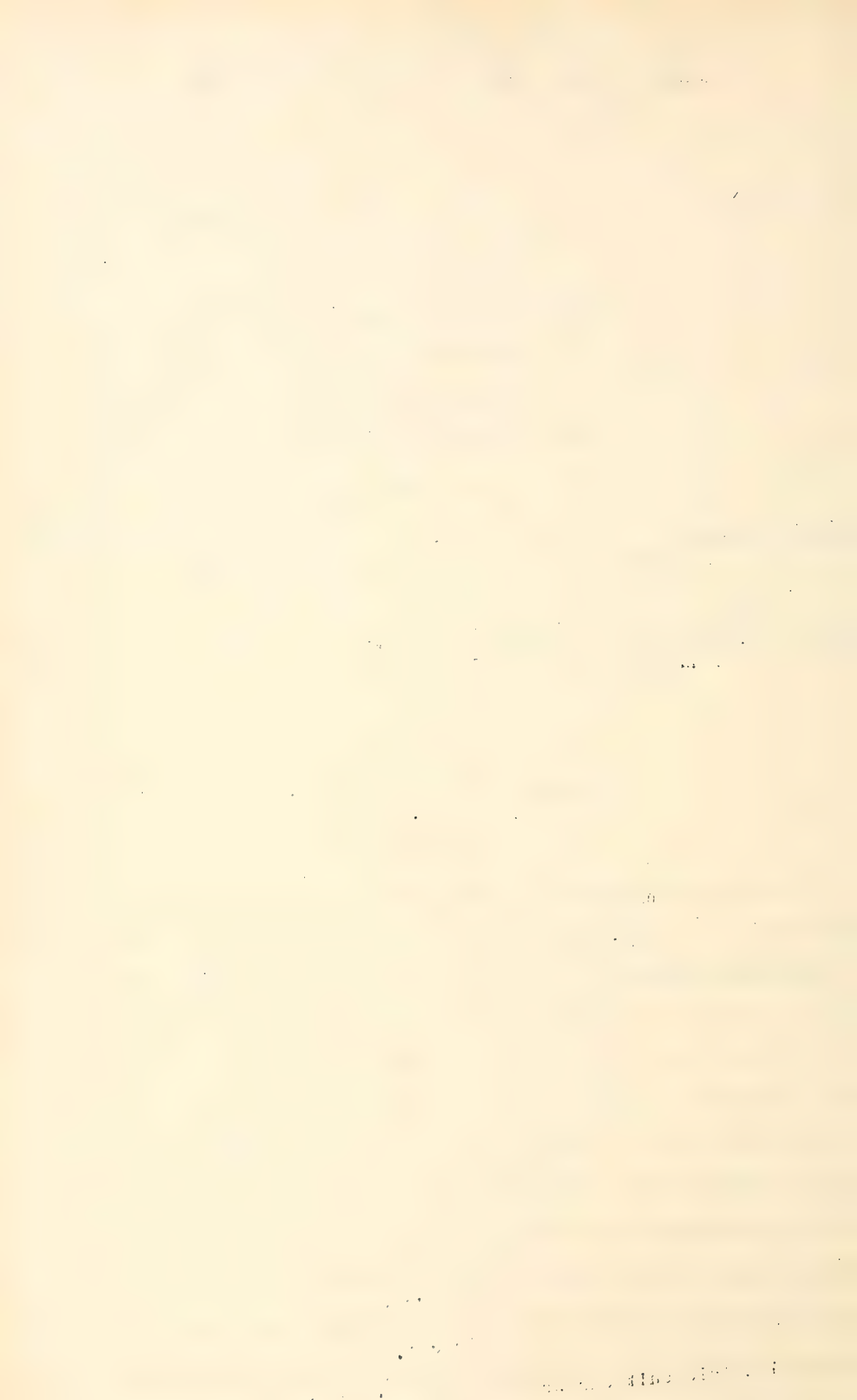
Appeal from the  
City Court of  
East St. Louis.

OPINION BY BOGGS, J.

An action on the case was instituted by appellee against appellant in the City Court of East St. Louis, to recover damages for ~~injuries~~ alleged to have been sustained by her on May 10th, 1922, as she was attempting to board one of appellant's cars.

The declaration charged, among other things, that on the date aforesaid, appellee attempted to board one of appellant's cars at the intersection of Missouri and Collinsville Avenues in the City of East St. Louis; that while she was upon the step of said car, appellant, through its servants, negligently and carelessly closed the door thereof, whereby appellee was thrown forward upon the platform or floor of said car, receiving the injuries for which this suit was brought. To said declaration, a plea of the general issue was filed by appellant. A trial was had, resulting in a verdict and judgment in favor of appellee





for the sum of \$2,500.00. To reverse said judgment, appellant prosecutes this appeal.

It is first contended by counsel for appellant that the verdict is against the manifest weight of the evidence.

The record discloses that the exit and entrance door on the rear of these cars is a double door, designated as a "four-leaf door". Two doors work against the cab post, and fold inward when opened up. The step is  $9\frac{1}{2}$  inches wide, projects from the car 11 inches, and is 52 inches long. It is operated by a vertical staff, handled by the conductor. When the doors are closed the step is folded up against the side of the car.

Appellee testified that as she was boarding said car, the conductor closed the door, catching her right foot between the door and the step, causing her to fall forward on the platform of the car. She further testified that her ankle was bruised; that the right side of her abdomen was also bruised, and that she immediately felt considerable pain in her abdomen and right leg, and that after she got off of the car her limb gave way, and she was assisted home. She further testified that on the date of the injury she weighed 167 pounds; that she had been a healthy woman and had never had any trouble with her limb or ankle; that prior to said injury she had performed all her household work, such as washing, ironing, cooking, scrubbing, raising chickens, etc. She further testified that as a result of said injuries, she had been and still was unable to perform any of her household duties; that she had been under the care of a physician from the date of said injury to the time of the trial, and that





she then weighed only 115 pounds.

One Charles Carmichael, a witness on the part of appellee, testified that he accompanied her to said car, and that as she was getting on the same, her foot was caught between the doors and she fell. Appellee was further corroborated by one Josie Coomer, who testified that she saw appellee fall, from having her foot caught in some way as she was attempting to board the car. On cross-examination, however, this witness finally stated that she was unable to state definitely as to what caused appellee to fall.

On the part of appellant, the evidence was to the effect that appellee had several bundles in her arms at the time in question; that she failed to catch hold of the hand-rail upon attempting to enter said car, and stumbled or fell on the platform thereof. Three witnesses on the part of appellee testified that she was the last person to board the car at said crossing. On the part of appellant, some six or seven witnesses testified that other parties boarded the car at this crossing, <sup>appellee</sup> after had entered the car.

The evidence was sharply conflicting on the question as to whether appellee's foot was caught as she was entering said car, as claimed by her, or whether she slipped and fell, as testified to by appellant's witnesses.

While there were more witnesses testifying on behalf of appellant than on the part of appellee, still the number of witnesses is not conclusive as to where the preponderance of the evidence lies. Where there is a conflict in the evidence, and the testimony of the successful party, considered by itself,





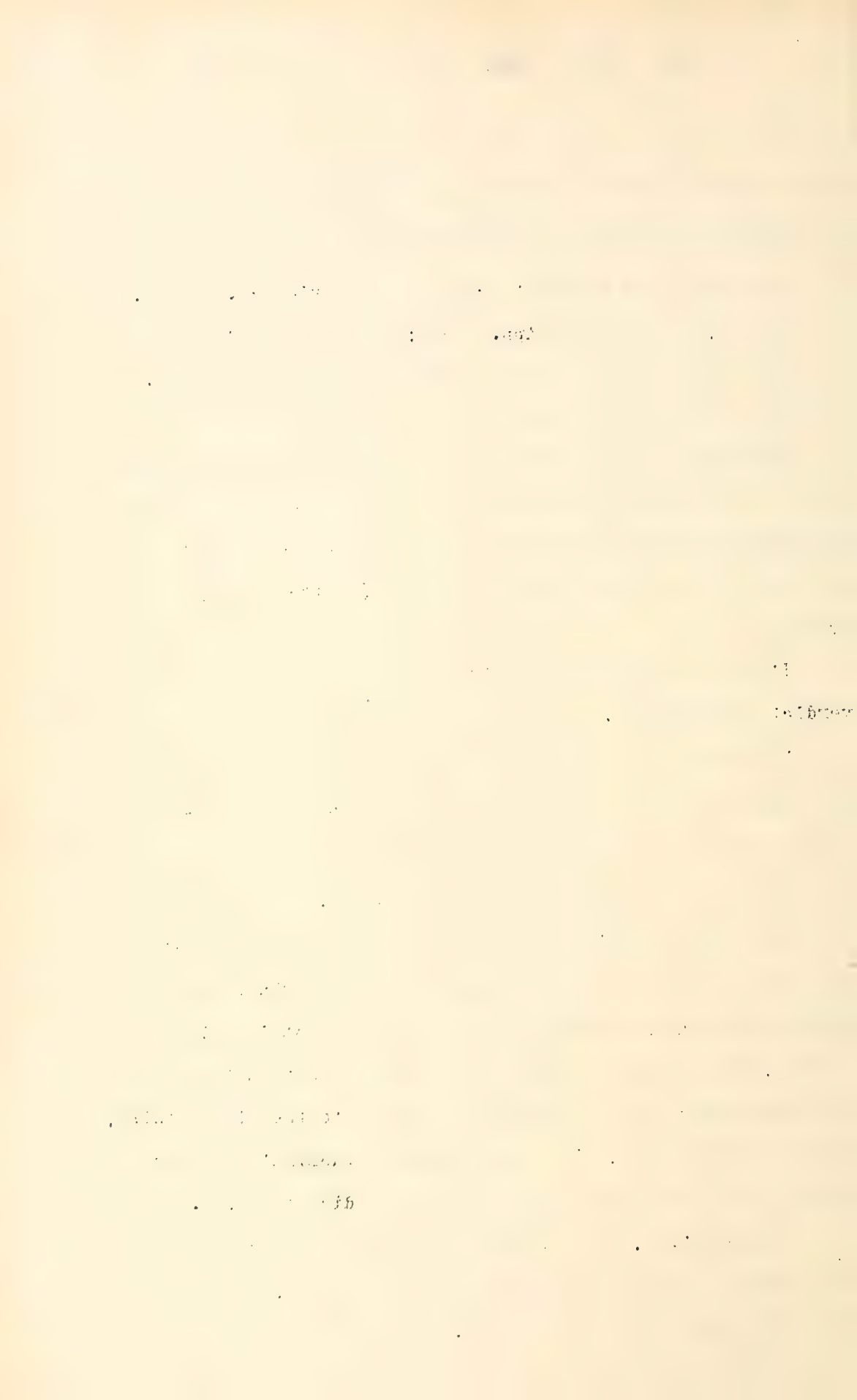
is clearly sufficient to sustain the verdict, we would not be warranted in reversing a judgment based thereon, unless the same is against the manifest weight of the evidence. C. & J. E. R. Co. v. Barrons, 128 App. 11-15; Shevailer v. Seager, 121 Ill. 564-569; Bradley v. Palmer, 193 Ill. 15-89; Netcher v. Bernstein, 110 App. 485-489.

Following the rule laid down in the foregoing authorities, we are not prepared to hold that the verdict in this case is against the manifest weight of the evidence. We therefore would not be justified in reversing the judgment on that ground.

It is next contended by counsel for appellant that the verdict is excessive.

Dr. Smith, the physician in charge of appellee following her injury, testified: "I was called to treat Mrs. Holland on the 11th day of May, 1922. .... I found her in a highly nervous state; she was in bed; she had an abraded right limb. The inner aspect of the right calf was denuded or abraded; the skin was off. It was an elongated area, perhaps three inches long and three-fourths of an inch wide at its widest portion. This wound was located beginning about an inch from the right ankle joint and extending upward to the middle third, inside the right leg. She complained of abdominal pains and I examined the lower abdomen and found some discoloration. It was in the hypogastric, that is, the lower part of the right side of the abdomen. There was some three or four spots, all varying in density; they were all dark. .... Some time in the first part of November she had me call at her house then, and I found her very much worse; she had turned yellow and she apparently had jaundice; this side was swollen; the right side, where she





had previously claimed to be hurt, and where I had found discoloration, and I diagnosed the case as an extension of inflammation, even extending to the gall bladder. .... She still has a swelling in her side and is not well today."

Dr. Smith also gave it as his professional opinion that appellee was then suffering from a permanent injury. In addition thereto, the jury had before it the evidence of appellee as to her injuries and her physical condition, immediately before and following her injury, and up to the time of said trial. No attempt was made by appellant to contradict by other evidence the testimony of said physician or of appellee with reference to her injuries.

Unless we are able to say that the verdict in this case is so excessive as to indicate that it was the result of prejudice or passion on the part of the jury, we would not be warranted in setting the same aside. N. C. S. R. Co. v. Zeiger, 182 Ill. 9-12; Baker v. Fritts, 143 App. 465-471; C. U. T. Co. V. Roberts, 131 App. 476-480; citing City of Joliet v. Johnson, 71 App. 423.

In view of the holding of the foregoing authorities, we would not be warranted in setting said verdict aside on the ground alone that it is excessive.

It is further contended by counsel for appellant that said cause should be reversed on account of alleged prejudicial remarks made by counsel for appellee in his closing argument to the jury. We have examined the record in this connection, and are of the opinion that we would not be warranted in reversing said judgment on account of the remarks of counsel.

One of the principal matters complained of was the statements





made by counsel for appellee in reference to certain file marks on the back of a photograph offered in evidence by appellant, showing the end of a street-car of a character similar to the one in question. The court, on objection being made, stated in the presence of the jury that the statements on the back of said photograph were immaterial and that the jury should disregard them. No serious prejudice could have resulted to appellant therefrom.

Appellant also contends that the court erred in granting appellee's counsel an extension of time to complete his argument. This was purely a discretionary matter with the court. Unless the record should disclose that the court abused its discretion in that respect, we would not be warranted in reversing the cause for that reason. The record discloses no abuse of discretion by the court in granting appellee's counsel a few additional minutes in which to close his argument.

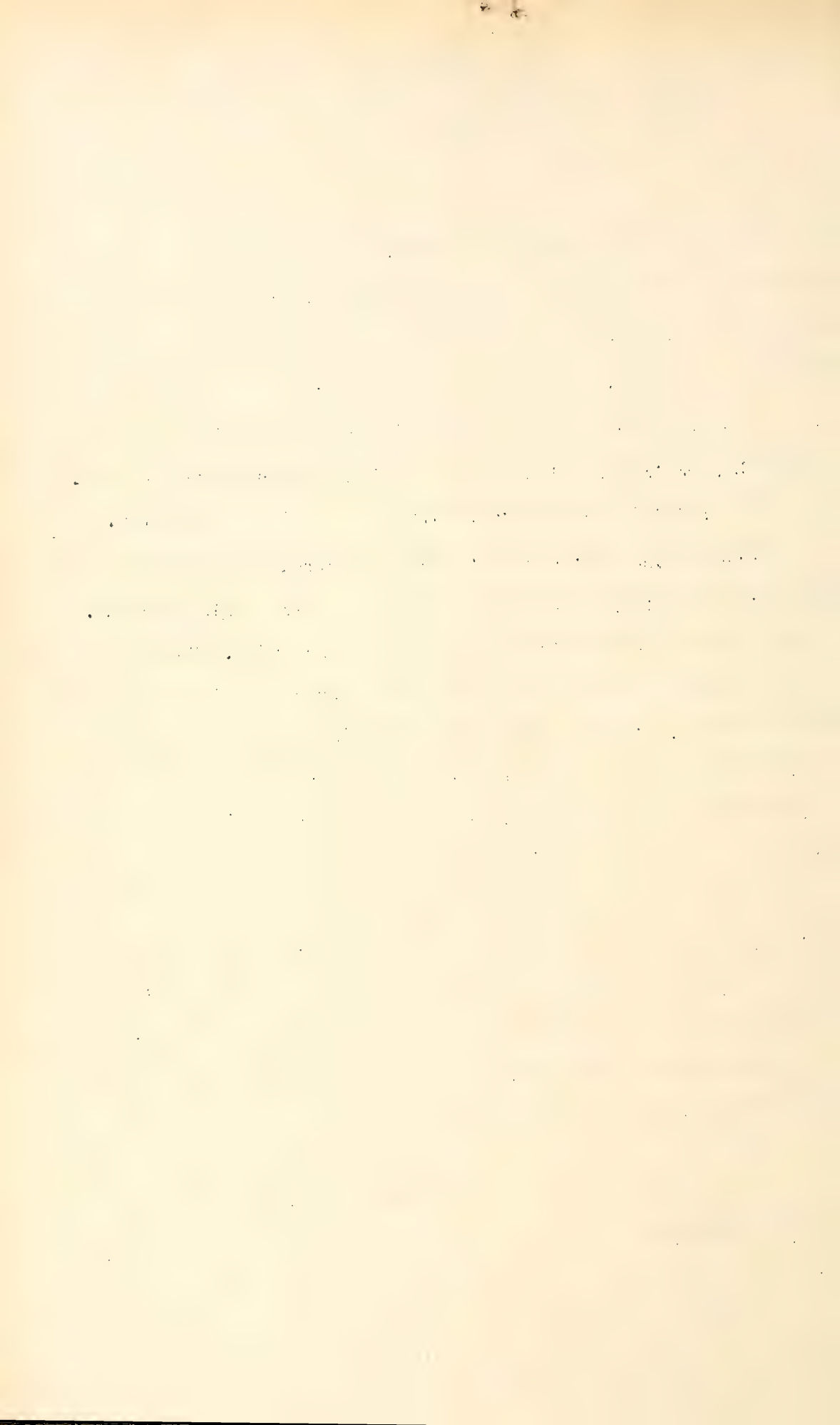
Errors were assigned on the rulings of the court on the evidence, and in the giving of the two instructions given on behalf of appellee. These assignments of error were not argued, and under the rules of this court they are taken as abandoned.

Finding no reversible error in the record, the judgment of the trial court will be affirmed.

Judgment affirmed.

NOT TO BE REPORTED.





Term No. 4.

Agenda No. 53.

State Of Illinois

In The

Appellate Court

Fourth District.

FILED

JUL 7 1924

Robert B. Root  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

October Term, A. D. 1923/

234 T.A. 653

THE PEOPLE OF THE STATE  
OF ILLINOIS,

Defendant in Error,

-vs-

LEE RAGLAND,

Plaintiff in Error.

ERROR TO THE

COUNTY COURT

OF WILLIAMSON COUNTY.

OPINION BY HIGBEE, J.

On a trial before a jury at the March Term 1923 of the County Court of Williamson County plaintiff in error, Lee Ragland, was found guilty under an information, charging him with the manufacture and sale of intoxicating liquor within prohibition territory without having a lawful permit therefor. After overruling motions for new trial and in arrest of judgment the Court assessed a fine of One thousand dollars, and committed plaintiff in error to jail for six months. This writ of error has been sued out to reverse that judgment. The reasons urged for reversal of the judgment is, that the Court improperly admitted in evidence a bottle so found by the officers in a raid of plaintiff in error's place of business containing what is termed by the witnesses as "white mule" or "corn whiskey". It is contended in this respect in behalf



1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

1911

of plaintiff in error that the search warrant which the officer had in his possession at the time of the raid was illegal and void. The plaintiff in error made no application before the beginning of the trial for an order directing the return to him of the bottle claimed to have been unlawfully seized. The Supreme Court has held that in the absence of such preliminary application it is not error for the trial court to admit such evidence upon an objection made at the time of its offer in the trial of a case; that under such an objection the only question is that of the competency, relevancy and materiality of the evidence offered. (*People vs. Brochamp* 307 Ill. 448.) So that if this question arose upon an objection to the introduction of the bottle in the trial of the case it would not have been error for the Court to admit it since no preliminary application for its return to plaintiff in error was made. However, the record does not show that the bottle was ever introduced in evidence or offered by defendant in error. The record does show that the officer Monroe Owens, produced it at the request of attorney for plaintiff in error upon his cross examination, but it was never offered in evidence. There are therefore no grounds for complaint by plaintiff-in-error that the search warrant was illegal and the Court made no ruling whatever upon the admissibility of evidence secured in the raid made.

It is also claimed that the evidence does not show that plaintiff in error owned the place where the liquor was found, or that he ever possessed the same or sold liquor in violation of the law. These were questions for the determination of the jury. Several witnesses testified that they had





within eighteen months purchased intoxicating liquor at this place; that plaintiff in error was there, and that it was known as Lee Ragland's place, or Ragland's place or as the place of Ragland, Pellie and Freeman. Under this proof this Court cannot hold that the verdict of the jury was not justified.

No complaint is made of the instructions and no error appears on the record. The judgment is therefore affirmed.

AFFIRMED.

NOT TO BE REPORTED.



3946a

FILED

JUL 7 1924

Robert B. Roe  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

STATE OF ILLINOIS

APPELLATE COURT

4TH DISTRICT

MARCH TERM A. D. 1924.

234 I.A. 653

Term No. 14

Agenda No. 59.

D. H. COMMINS,  
Appellee,  
  
-vs-  
  
FORT DEARBORN CASUALTY  
UNDERWRITERS,  
Appellant.

:  
:  
:  
:  
:  
:  
:  
:  
:

APPEAL FROM  
SALINE CIRCUIT  
COURT.

OPINION BY HIGBEE J.

Appellant insured appellee against loss and damage to his car by fire. The car was destroyed by fire and he recovered a verdict and judgment for \$500.00. The only point urged as a ground for reversal is that the verdict is excessive and is based on the testimony of witnesses who were not qualified to testify as to the value of the car.

Appellee and five other witnesses, all of whom were familiar with the car and its condition, testified as to its fair cash market value at the time of the fire. We are of the opinion that all of them were shown to have had sufficient experience to have an opinion on that subject. Their estimates varied from \$400.00 to \$650.00. Appellant produced three witnesses who placed the value at from \$100.00 to \$125.00. There was a serious conflict in the evidence.



100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

100

in that regard and it was the peculiar province of the jury to weight the evidence and determine its credibility. As we would not be warranted in holding that the verdict is manifestly against the weight of the evidence the judgment is affirmed.

AFFIRMED. .

NOT TO BE REPORTED.





3947a

Term No. 17

Agenda No. 2

In The  
APPELLATE COURT OF ILLINOIS  
FOURTH DISTRICT

FILED

JUL 7 1924

MARCH TERM, A. D. 1924.

Robert B. Roe  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

The First National Bank  
of Flora, Illinois,  
Appellant,  
  
-vs-  
  
J. L. Harrell,  
Appellee.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

234 I.A. 653

APPEAL FROM CIRCUIT  
COURT OF CLAY.

OPINION BY HIGBEE J.

On December 11, 1922, in vacation after the September Term of the Circuit Court of Clay County, a judgment by confession was entered in said Court in favor of appellant, The First National Bank of Flora Illinois, against Maggie Harrell and appellee J. L. Harrell for the sum of \$9020.92. This judgment was based upon three judgment notes, all bearing date of June 15, 1922, one for the sum of \$6000 due two years after date, one for \$1500 also due two years after date, and one for \$454.77 payable on demand. The notes drew interest at the rate of 7 per cent per annum from date, and each purported to be signed by A. W. Harrell, Maggie Harrell and J. L. Harrell.

On September 10, 1923, in term time, appellee, J. L. Harrell filed a motion in said court to open up said judgment and for leave to plead. This motion was granted and on September 12, 1923, appellee filed his verified plea of non-assumpsit

1870

1871

1872

1873

1874

1875

1876

1877

1878

1879

1880

1881

1882

1883

1884

1885

1886

1887

1888

and appellant joined issue on said plea. On September 14, 1923, appellant filed a written motion for leave to amend the declaration by filing nine additional counts. Copies of the proposed additional counts were attached to and made a part of the motion. The first proposed additional count was as follows: "And for that whereas, also, the defendants, on to-wit: the 4th day of December, in the year 1915, in the County aforesaid, made their promissory note and delivered the same to the plaintiff, and thereby then and there promised to pay to the plaintiff, ninety days after the date thereof, the sum of Six Thousand Five Hundred Dollars, for value received, with interest thereon after the maturity thereof at the rate of seven per centum per annum, at the First National Bank of Flora, Illinois, and thereby also then and there promised to pay to the holder of the said promissory note and attorney fee of Five Hundred Dollars, if the said note was not fully paid when due, and the same should be placed in the hands of an attorney at law for collection, which said attorney's fee should be included in and made a part of any judgment rendered on the said promissory note; and the said plaintiff avers that the said promissory note was not fully paid ~~paid~~ when due, and that the same was thereafter by it placed in the hands of attorneys at law for collection; by means whereof the defendants then and there became liable to pay to the plaintiff the said sum of money in the said note specified, according to the tenor and effect thereof, and being so liable, the defendants, in consideration thereof, then and there promised the plaintiff to pay to it the said sum of money according to the tenor and effect of the said note."

"COPY OF NOTE SUEB ON

\$6500.00

Flora, Illinois, Dec. 4th 1915

Ninety days after date, we or either of us promise to pay to





the First National Bank of Flora, Illinois, or order, Six Thousand Five Hundred Dollars, for value received, at the First National Bank of Flora, Illinois.

With interest at the rate of 7 per cent per annum after due. If this note is not fully paid when due, and the same shall be place in the hands of an attorney at law for collection, the makers hereof hereby agree to pay to the holder hereof an attorney fee of \$500. which shall be included in and made a part of any judgment rendered on this note. Presentment for payment and notice of dishonor is hereby waived.

Due Mar. 4, 1916.

A. W. Harrell  
Maggie Harrell  
J. L. Harrell"

Each of the other eight additional proposed counts, were identical with the above, except as to the dates of the notes sued on. which ranged in three month periods from March 4, 1916, to December 4, 1917. The Court denied appellant's motion for leave to file the nine additional counts to the declarations and afterward, a jury having been waived, the case was tried before the Court, upon the original declaration, the verified plea of non-assumpsit and joinder of issue. Appellant introduced no evidence on the trial and the evidence on behalf of appellee clearly proved that he never signed any of the three notes declared on in the original declaration for which judgment was taken by confession. The trial court therefore found the issues for appellee and rendered judgment against appellant for costs.

The correctness of this judgment is challenged by appellant and it also insists that the Court erred in refusing to permit it to file the nine additional proposed counts to the declaration.

It appears to us that under the uncontradicted proof in the case no other judgment could have been properly rendered; upon





the case presented by the pleading than that entered by the trial court. The real question raised by appellant and the one to which its argument is devoted, is the claim that the court erred in ruling against the proposed amendments to the declaration. Appellant claims that there was an original loan of \$6000.00 made by it to said A. W. Harrell, Maggie Harrell and appellee, J. L. Harrell in the year 1913, and makes the statement in its brief that the object of this amendment was to permit appellant to show and prove upon the trial that the notes embraced in the additional counts were for money loaned by the bank and never paid; that the original notes were renewed from time to time and finally included in the notes for which judgment by confession was in part rendered; that "by the ruling of the court below, denying leave to appellant to amend the declaration, the appellant was precluded from showing and proving any such facts, and was also thereby prevented from recovering any part of the original loan, which has never been paid, against the appellee." In passing on the question whether the amendment should be allowed the trial judge had before him only the original declaration declaring upon the three notes upon which judgment was taken by confession, and the nine proposed additional counts each declaring upon a note for \$6500.00 as above set forth. There was no reference in the additional counts to the original declaration and nothing in them to show any connection with the original cause of action. The Court was not in any way advised by the proposed amendment of the theory advanced by appellant in its argument here concerning the renewal of an original note claimed to have been signed by appellee in 1913. The proposed additional counts were complete and independent in themselves, and neither they nor the motion asking leave to file them referred in any way to the original



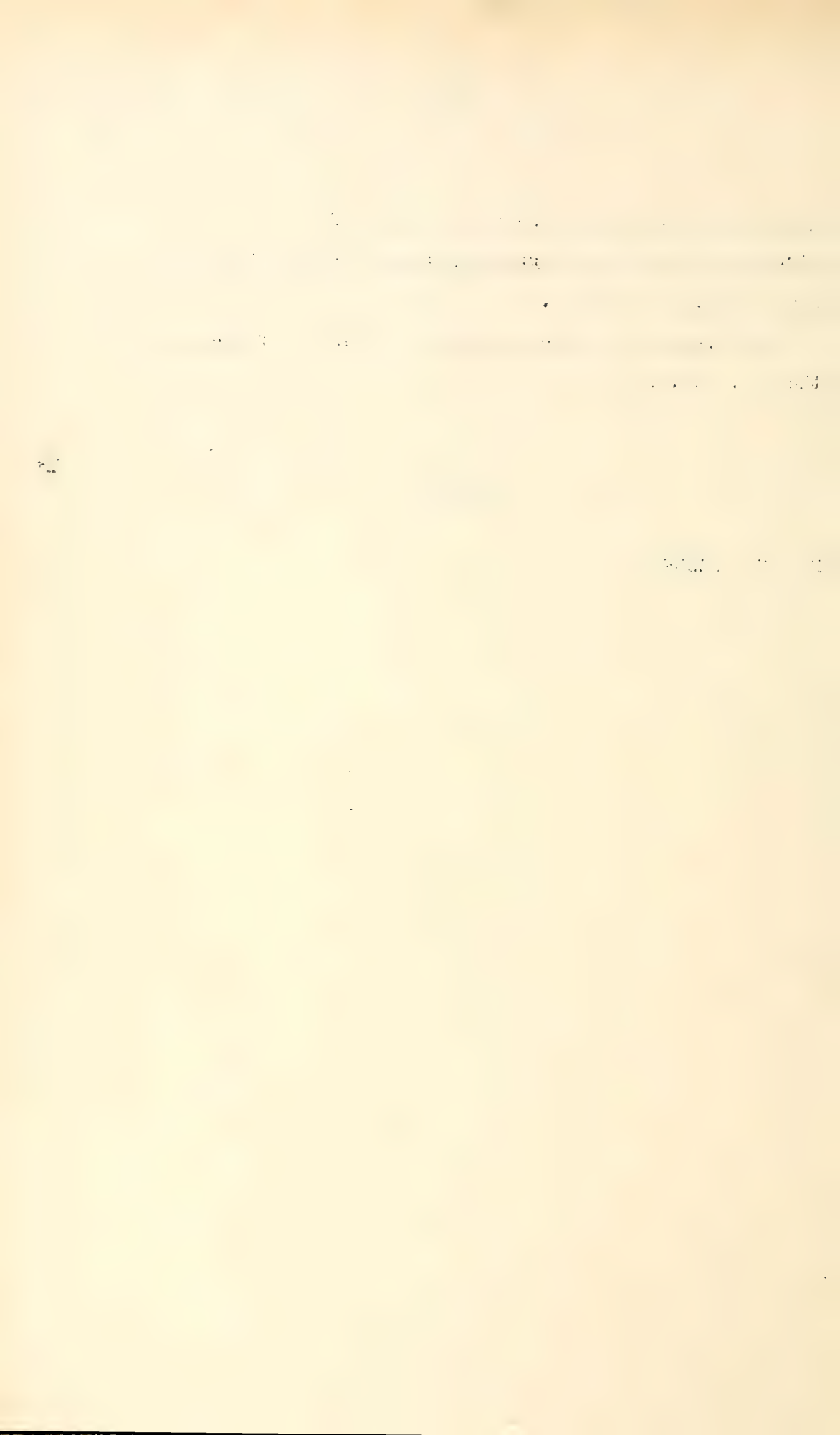
declaration or the case stated therein. Under these circumstances the court properly refused permission to file the proposed amended counts.

The judgment of the court below in favor of appellee is therefore affirmed.

AFFIRMED.

NOT TO BE REPORTED.





3948a

Term No. 37

Agenda No. 35

In The  
APPELLATE COURT OF ILLINOIS  
FOURTH DISTRICT  
MARCH TERM, A. D. 1924.

FILED

JUL 7 1924

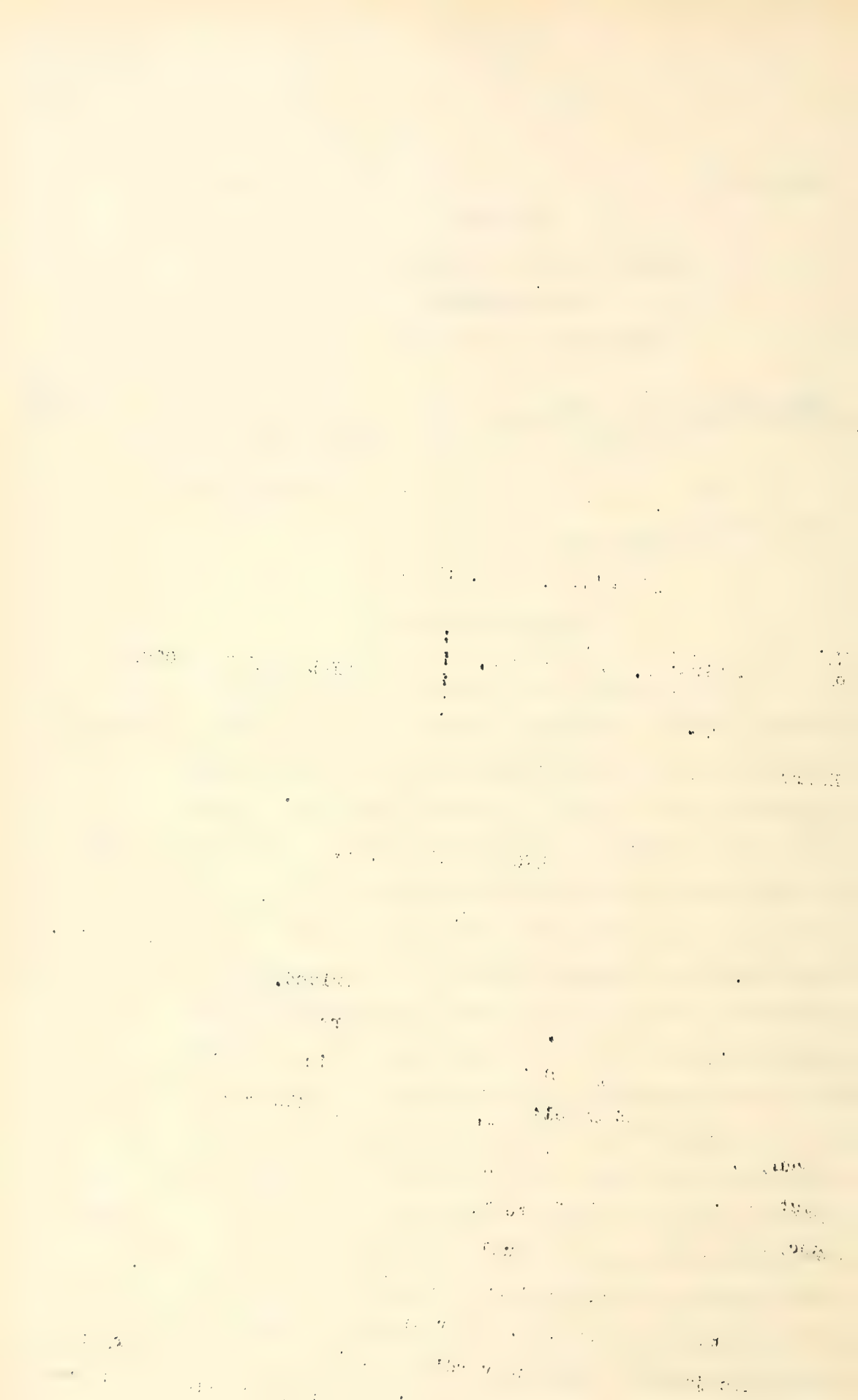
Robert B. Hill  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

Walter Latinette, a minor,  
by Mary Latinette, Next Friend,  
Appellee,  
  
-vs-  
  
Harry Kramer,  
Appellant.

234 T.A. 654  
APPEAL FROM CITY COURT  
OF EAST ST. LOUIS.

OPINION BY HIGBEE, J.

This is an appeal from a judgment of the City Court of East St. Louis for \$750.00 in favor of appellee, Walter Latinette, a minor, who sues by his mother as next friend, against Appellant, Harry Kramer, on account of personal injuries sustained by appellee on August 17, 1923, in a collision between his motorcycle and appellant's automobile. The collision occurred at the intersection of Fortieth Street and Bond Avenue just outside the corporate limits of East St. Louis. The declaration was in the usual form and charged <sup>general</sup> negligence by appellant in the driving and operation of his automobile. One of the assignments of error urged as grounds for a reversal of this judgment that the verdict and judgment are contrary to the evidence, in that the evidence fails to show appellee was in the exercise of due care for his own safety at the time of the injury. Bond Avenue runs east and west and is intersected by Fortieth Street running north and south. Bond Avenue is not paved, but is covered with cinders and has a street car track in the center. Appellant conducts a store at the southeast corner of the intersection of these streets and there is a restaurant opposite his





store on the west side of Fortieth Street, at the southwest corner of this intersection. At about 6:30 P. M. on August 17, 1923, appellant was going West on Bond Avenue and appellee was going east. On the South side of Bond Avenue and in front of the restaurant at the southwest corner of the intersection were parked some automobiles. The evidence shows that as appellee came east on his motorcycle he turned into the center of the street car tracks to pass around these automobiles, and that he was still in the center of said tracks when the collision occurred. It is contended by appellant that his car was standing still at the time of the collision, and that appellee was guilty of contributory negligence in not changing the course of his travel either to the south of the street car tracks or <sup>to</sup> ~~the~~ the north of his automobile. While Appellant and one other witness testified that appellant had stopped his car at the time of the collision, several other witnesses testified that appellant had not stopped his car, but had started to turn south on the east or lefthand side of Fortieth Street before reaching the center line of Fortieth Street, where it intersected Bond Avenue; that while so turning south on Fortieth Street he was looking back talking to a passenger in the backseat of his car; that the accident occurred while he was so turning south on Fortieth Street and talking to such person. Whether or not appellee was guilty of contributory negligence was a question <sup>of fact</sup> to be determined by the jury. In our opinion the evidence amply justified a verdict on that question in favor of appellee.

Complaint is also made of an instruction given on behalf of appellee advising the jury that the proper measure of damages would be such a sum as in the judgment of the jury under the evidence and instructions of the Court as would be a fair compensation for such injuries sustained by appellee, if any, as were claimed in the declaration and proven on the trial.

1. The first part of the report is a general  
 introduction to the subject of the study.  
 2. The second part is a detailed description of the  
 methods used in the study.  
 3. The third part is a description of the results  
 of the study.  
 4. The fourth part is a discussion of the results  
 and their implications.  
 5. The fifth part is a conclusion.  
 6. The sixth part is a list of references.  
 7. The seventh part is an appendix.  
 8. The eighth part is a list of figures.  
 9. The ninth part is a list of tables.  
 10. The tenth part is a list of abbreviations.

The first part of the report is a general  
 introduction to the subject of the study.

The second part is a detailed description of the  
 methods used in the study.

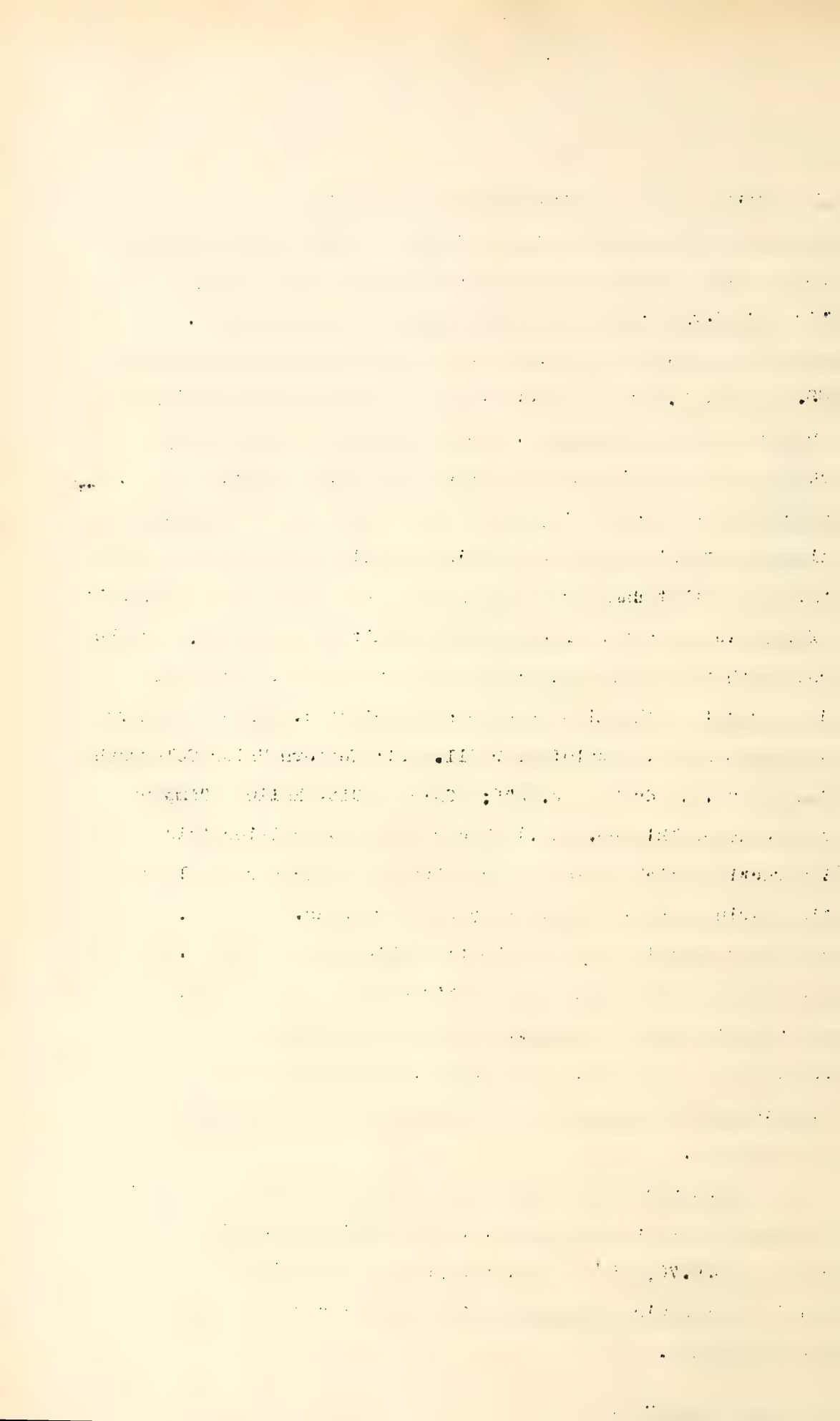
The third part is a description of the results  
 of the study.

The criticism made of this instruction is that appellee is a minor, who sues by his mother as next friend and that this instruction would entitle appellee to recover for loss of time while his injuries prevented him working during his minority. The proof shows that appellee was a minor and had been receiving \$3.90 per day, and was prevented from working thirteen days on account of his injuries. There is nothing in the record showing to whom his wages had been paid nor any evidence or circumstances tending to show that his father had relinquished his right to his earnings. It is the well settled doctrine of this State that damages for loss of time by a minor as a result of injuries cannot be recovered in a suit by the minor, for the reason that the father would have the right to recover such damages unless the minor had been emancipated. (Donk Brothers Coal Company vs. Retzloff 229 Ill. 194; Western Union Telegraph Company vs. Woods 88 App. 375; Chicago City Railway Company vs. Schaefer 121 App. 334.) Under these authorities this instruction which would have permitted the recovery of loss of time during appellee's minority was erroneous. However, it could have applied only to the time which appellee lost. The record shows this to have been thirteen days and that his wages at that time were \$3.90 per day, which would have resulted in a total loss of \$50.70. Except as to the amount of said wages the verdict of the jury was clearly sustained by the proof.

The judgment of the Court below will therefore be affirmed on condition that appellee enter a remittitur therefrom in this court of \$50.70, within thirty days after the filing of this opinion, otherwise said judgment will be reversed and the cause remanded.

NOT TO BE REPORTED.





Term No. 41

Agenda No. 44

In The  
APPELLATE COURT OF ILLINOIS  
FOURTH DISTRICT,

FILED

JUL 21 1924

MARCH TERM, A. D. 1924.

Robert P. [Signature]  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

234 I.A. 654

W. J. Pierce,  
Appellant,

-vs-

M. A. Gurley and Hal W.  
Travillion,  
Appellee.

:  
:  
:  
:  
:  
:  
:  
:

APPEAL FROM CIRCUIT  
COURT OF FRANKLIN COUNTY.

OPINION BY HIGBEE J.,

This is an action by appellant, W. J. Pierce against appellees, M. A. Gurley and Hal W. Travillion to recover damages for the publication of an alleged libel in a newspaper called the "Zeigler News". The declaration consisted of one count to which a demurrer was sustained and judgment was rendered against appellant for costs. The article published of which complaint is made is as follows:

"He (meaning the plaintiff) the School Treasurer, W. J. Pierce, (meaning the plaintiff) and Township Clerk, Guy Biby, sprung a surprise this week on those taking an interest in school affairs of the township, by advancing the election for school trustee from April 14th to next Wednesday, April 3rd.

"In keeping with the public policy of these two men



2000 1000

1000

1000 1000

1000

1000 1000

1000 1000



1000 1000

1000

1000

1000 1000

1000

1000 1000

1000



1000

1000

1000 1000

1000 1000

1000

1000 1000



(meaning this plaintiff) not notice was published in the papers of this township issueing the call for the election and announcing the changing of the customary date. As the result of the secret political work of these two men (meaning this plaintiff) Fred Eiserheur, the father-in-law of the Town Clerk, is the only name to appear on the ballot for this office at the Township election next Tuesday. His name will appear on the Democratic ticket.

"Those familiar with the political activity of W. P. Pierce (meaning this plaintiff), is not surprised at these jolts, which he (meaning this plaintiff) gives the public, when he (meaning this plaintiff) wishes to put something over which could not be supported at the polls when the voters would veto his actions. For years he ( meaning this plaintiff) has been school Treasurer and is probably arranging matters to serve another term. The law is plain on the publishing of funds going through his hands. The public is entitled to know where the money goes.

"Almost every school district in the township hassa deficit in meeting its expenses. The law calls for the publishing of this report. His (meaning this plaintiff) attention has been called to this law by the Attorney General of the State of Illinois. The State Superintendent of Public Instruction, States Attorney and other officials. A grand jury indictment was threatened, and yet he (meaning this plaintiff) fails, or refuses, to have

*[Faint, illegible text in the upper half of the page, possibly bleed-through from the reverse side.]*

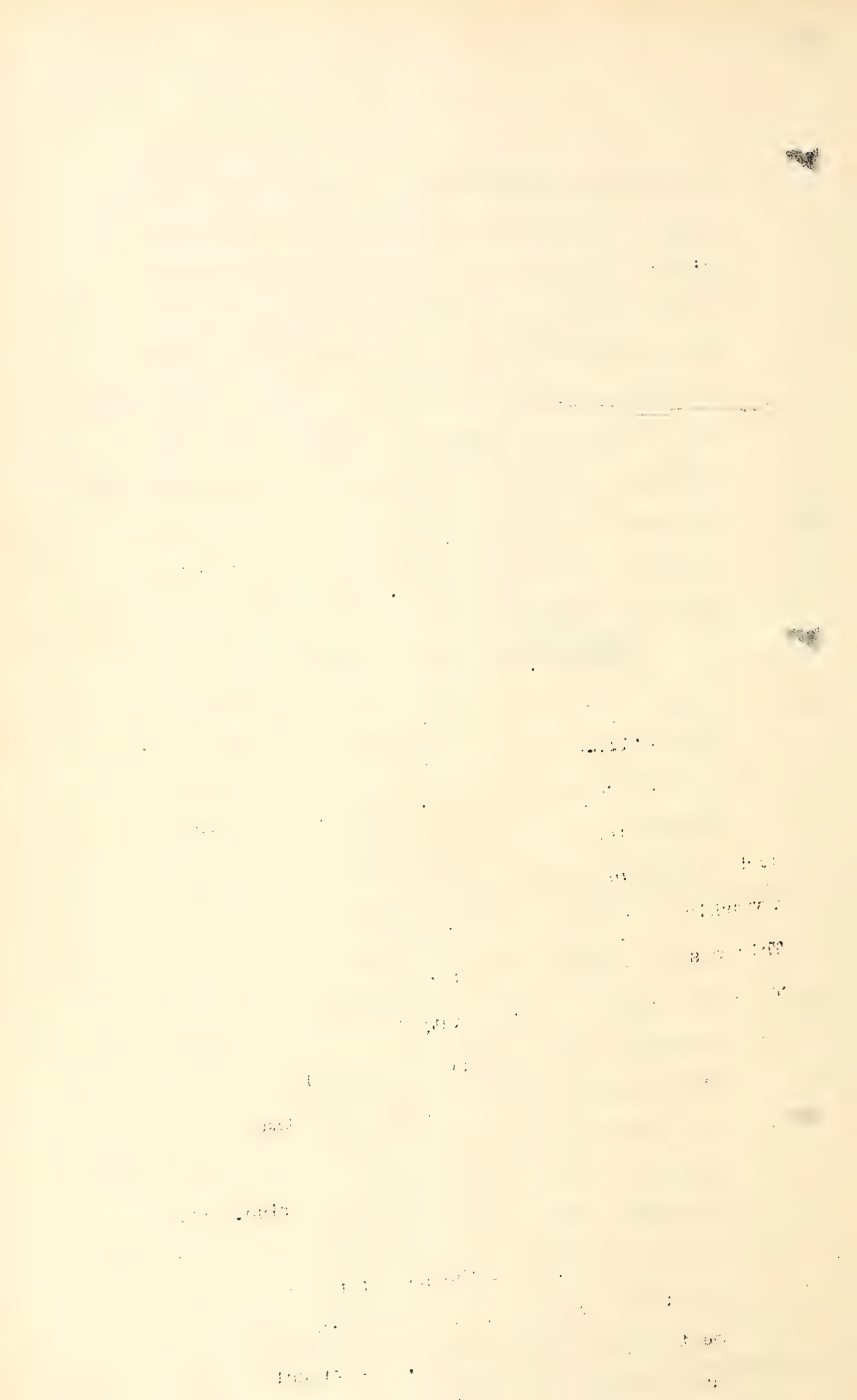
*[Faint, illegible text in the lower half of the page, possibly bleed-through from the reverse side.]*

his (meaning this plaintiff) accounts published in a paper so the tax payers can see where the money goes. To assist in carrying out this scheme no notice is made of the changing of the date of the election until after it is too late to file petitions. The notice is not published in the papers and the Town Clerk sends the ballots out of the township to have them printed. In the meantime Fred Eiserheuer, who is the father-in-law of the town clerk, is notified, has his petition filed and is the only candidate whose name appears on the ballot.

<sup>petition</sup>  
"A ~~petition~~ was passed Monday to place the name of W. Young who lives near this city, on the Republican ticket for this office. A trip was made early Tuesday morning to the home of the Township clerk to get Young's name on the ticket. This was refused and Biby stated that the ticket had been sent to another county to be printed. During the term Biby has served he has always sent the ballots to Benton or somewhere out of the Township to be printed.

"The change of election date came as a surprise. The law calls for it to be on the same day as the regular township election only when the school township exactly coincides with the political township, otherwise it would come this year on April 14th. Previously it has always come on the latter date. This year these two officials (meaning this plaintiff) seemed to have changed the election date without informing the public.



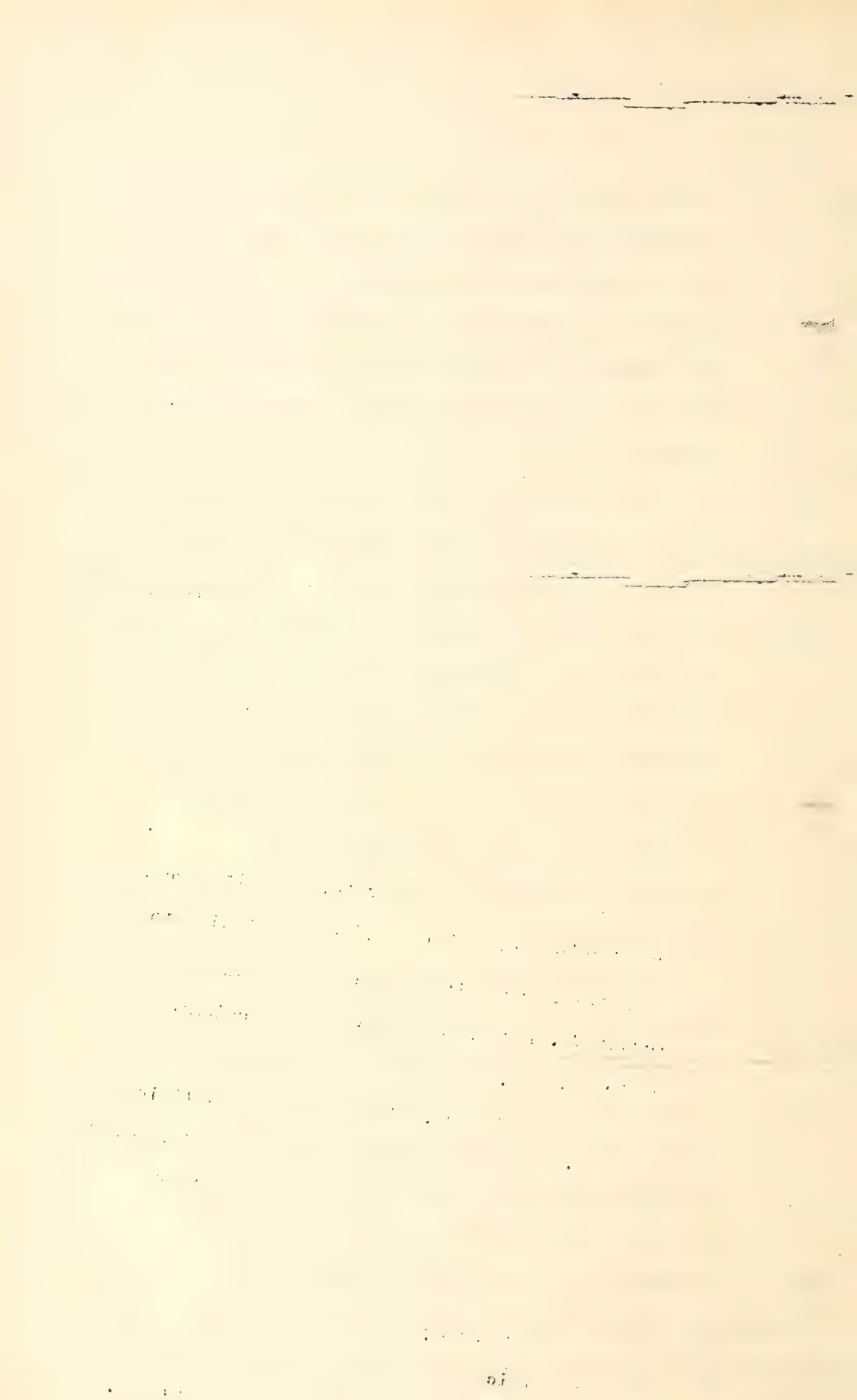


"This election for school trustee is more important than appears on the surface. Last winter a local, of the miners union of this city, out of their treasury, paid for the publishing of a report of the receipts and expenses of a district that should have been printed and paid for as the law directs by the township.

"A movement is on foot to secure a secure school treasurer in either Royaltan or Zeigler, who can be reached without hiring a jitney or traveling to the country. The way of handling this fund was such that when Pierce (meaning this plaintiff) ran for township election a year ago he hardly received a complimentary vote. Now it appears he (meaning this plaintiff) does not wish to take his chance with the public and as a result Mr. Eisenheur is the only candidate printed on the ticket.

"Personally Mr. Eisenheur is a qualified man perfectly able to handle the position with credit to himself and the District but the methods used to have his the only name on the ticket has raised a great deal of complaint and at a meeting of voters in this city Monday night W. Young was endorsed for the office and voters are requested to write his name in on the ballot for School Trustee."

It is not alleged in the declaration that appellant sustained special damage by reason of the publication. It is simply alleged generally that he was injured in his good name, credit and reputation and brought into public scandal and disgrace





and shunned and avoided by divers persons, and that he was damaged. Neither is it alleged that the publication in any way referred to his business or profession. It is the well established doctrine of this State, as recognized by both the parties to this suit, that unless the language used is libelous per se it is not sufficient for the plaintiff to allege generally in his declaration that he was damaged, but he must aver that special damages have resulted stating what they are and prove it on the trial. (Campbell vs. Morris 224 Ill. App. 569, and Strauss vs. Meyer 48 Ill. 385).

If therefore the language used by appellants was not libelous per se the Court properly sustained the demurrer to the declaration. In our opinion the published matter is not libelous per se. The article was concerning the public conduct of appellant who was a public officer. Public conduct of all public officers is a matter of public concern and may be made the subject of fair and reasonable criticism so long as the same does not amount to false and defamatory statements imputing criminal offense or moral delinquency to the officer in the discharge of his official duties. (People vs. Fuller 238 Ill. 116 and Sullivan vs. Illinois Publishing and Printing Co., 186 Ill. App. 268.

That political leaders are subject to much criticism and ridicule not taken seriously by the reading public is a matter to be taken into consideration by the Court in determining whether any given article tends to impute criminal offense or moral delinquency to such an officer. (Sullivan vs. Illinois Publishing and Printing Company Supra.) In our opinion the published article when read in the light of the above authorities cannot be said, in the absence of allegations of special

1750

\_\_\_\_\_

1750-1751

1750

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1750

1750

1750

1750

\_\_\_\_\_

\_\_\_\_\_

damage or allegations by way of innuendo charging appellant with any criminal offense or moral delinquency in the discharge of his official duties, to constitute a sufficient basis for a suit for libel and the Court there fore did not err in sustaining the demurrer to the declaration.

The judgment is affirmed.

AFFIRMED.

NOT TO BE REPORTED.



1904

• 2 •

... ..

 $\frac{1}{2} \log \frac{1}{2}$ 

200 100 50 25 10 5 2 1

395 Ja

Term No. 47

Agenda No. 17

In The  
APPELLATE COURT OF ILLINOIS  
FOURTH DISTRICT

FILED

MARCH TERM A. D. 1924.

JUL 7 1924

Robert B. Rice  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

Herman H. Wolter and  
Maude E. Wolter,  
Appellees

234 I.A. 654

-vs-

APPEAL FROM CITY

Elmer H. Wright,  
Appellant.

COURT OF EAST  
ST. LOUIS.

OPINION BY HIGBEE, J.,

This is an action in assumpsit brought by appellees, Herman H. Wolter and Maude E. Wolter, his wife, in the City Court of East St. Lucis, against appellant, Elmer H. Wright to recover \$1100.00 which appellees had paid appellant under a contract for the erection and sale to appellees of a house in East St. Lucis. The declaration consisted of the common counts and a special count. The special count alleged that appellant had agreed to sell certain described premises to appellee and improve the same by a five room modern frame bungalow for the sum of \$4500.00, payable as follows: \$1000.00 in cash and the balance in monthly installments of \$50.00 each, and to erect a garage with a concrete floor on said premises for the additional consideration of \$100.00; that appellees paid said initial payment of \$1000.00 and two of the \$50.00 monthly installments but that appellant did not erect the garage nor construct walks as agreed on the premises.

Issues were formed and a trial had before a jury which resulted in a verdict for appellee in the sum of \$1100.00. After a motion for new trial had been overruled, it is claimed by appellees that the attorneys for the two parties agreed that appellant

1890

1890

1890

1890

1890

1890

1890

1890

1890

1890

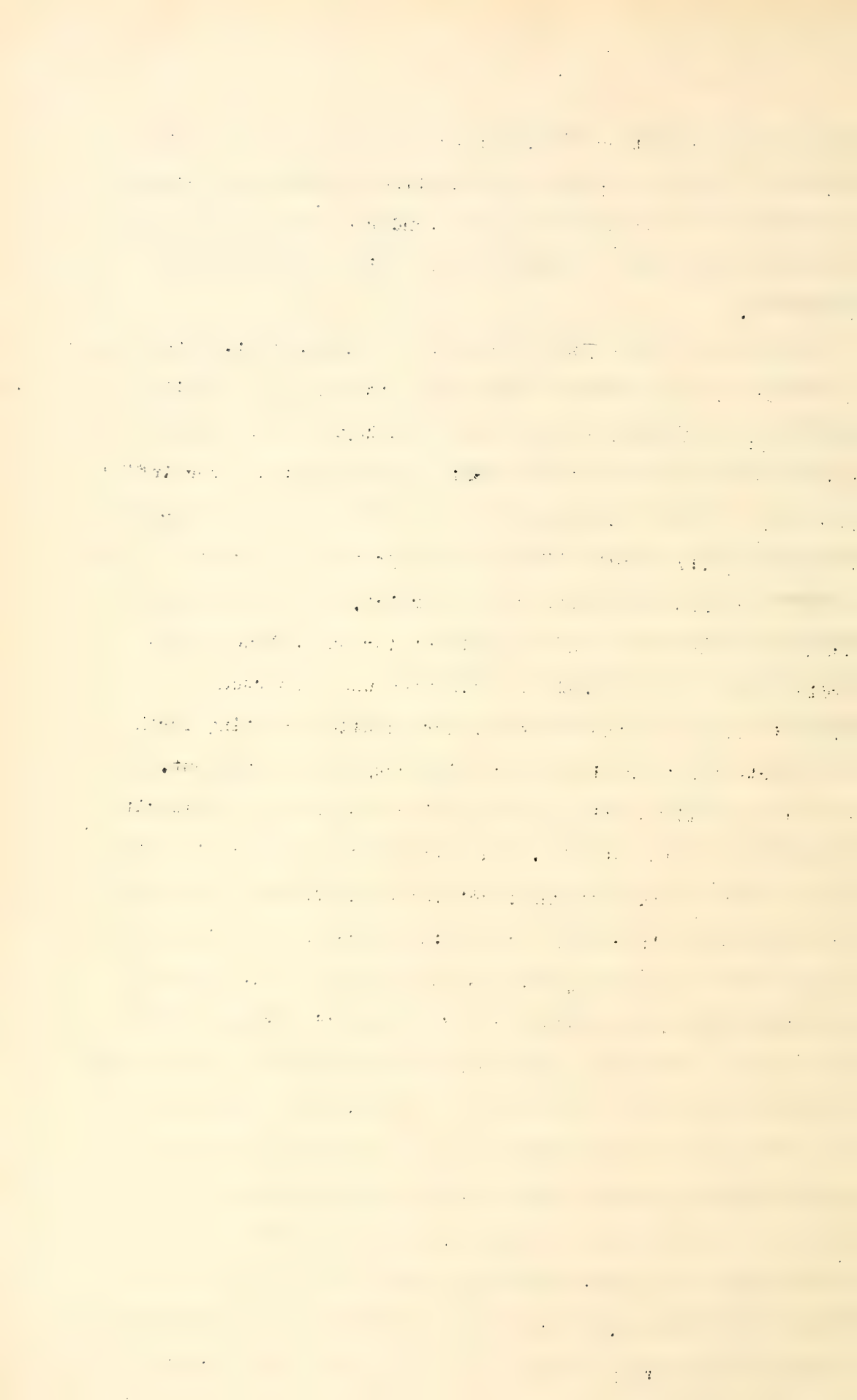
1890

1890



should have a credit of \$250.00 representing a monthly rental of \$50.00 for the five months which appellees occupied the premises in question: that judgment was then rendered against appellant for \$850.00 and costs to reverse which this appeal has been prosecuted.

Appellees filed a plea of release of errors stating that after the return of the verdict in this case attorneys for appellees delivered to attorneys for appellant the keys to the premises in controversy and appellant executed and delivered a receipt therefor, and that attorneys for appellant agreed that \$250.00 representing five months rental of the premises in question should be deducted from the amount of the verdict, and that thereupon judgment was entered against appellant for the balance of the verdict amounting to \$850.00. This plea was supported by affidavit of one of the attorneys for appellees setting forth these facts together with a certified copy of the judgment. To this plea appellant filed a replication supported by affidavit of himself and his attorney. The affidavit of appellant states that the acts of his attorneys set forth in such plea were done without appellant's consent or knowledge and that he did not in any way approve the same, and that such action of his attorney was unauthorized. The affidavit of appellant's attorney denies that he made a compromise of the debt due his clients as found by the jury or that he had authority to do so. These facts do not in our opinion, constitute a release of errors. It is the well established doctrine that an attorney has no authority by reason of his general retainer in a suit to discharge a debt to his client or to accept anything other than money in payment of his client's debt, and has no power without express authority to bind his client by compromise of the pending suit or other matter entrusted to his care. (McClintock vs. Holberg 168 Ill. 384 and Schroeder Wolf 227 id 133.) We therefore hold that

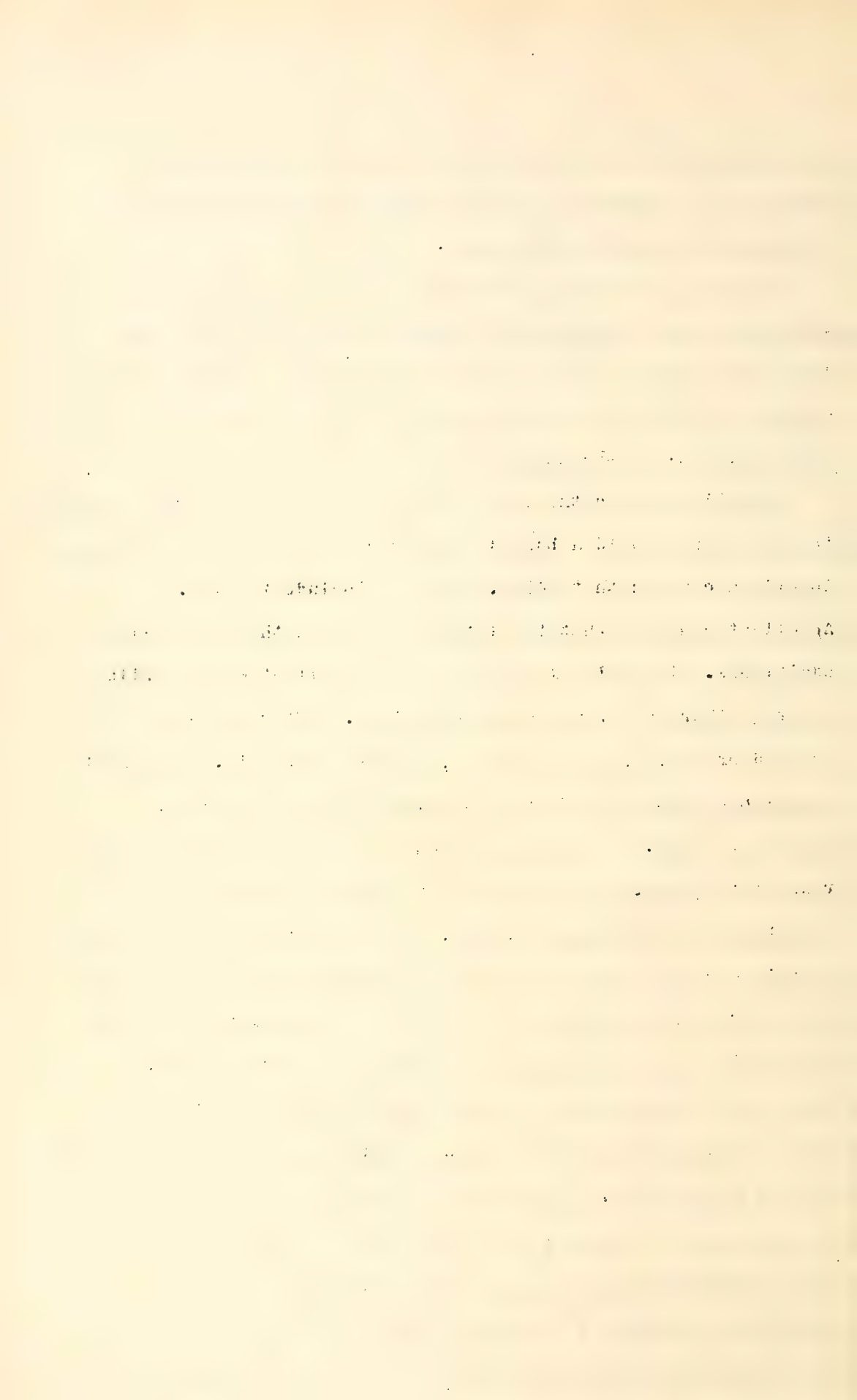


as the matters set forth in such plea do not show express authority to compromise appellants suit they do not constitute a release of errors in this case.

This plea of release of errors has not been passed upon before this time and therefore appellees have not filed any brief and argument on the merits of this case. However, we have examined the record and it does not show any sufficient reason for a reversal of the judgment.

Appellant owned the lot in question and it was agreed verbally that he should build a bungalow thereon for appellee for \$4500.00. Appellees contend that \$4500.00 was to include the lot. Appellant contends that the lot was to be One thousand dollars additional. It would also appear that appellant was to build a garage thereon for One hundred dollars. After the house was erected or at least partially so, appellee moved in. Appellant executed a bond for a deed to appellees whereby appellees were to pay \$50.00 a month and when the contract price had been reduced to \$3000.00 appellant was to execute a deed subject to a mortgage for the unpaid amount. It was contended on the trial of this case by appellees that appellant had not complied with his contract in the erection of a garage, construction of walks or painting the house and probably in some other respects. These were all questions of fact to be determined by the jury whose findings this court should not ~~dis~~ disturb under the condition of this record. Appellant's contention seems to be that the execution of the bond for a deed was the reducing to writing of the verbal contract and superseded the same, and that therefore an action of assumpsit could not be maintained. We do not agree with this contention. An action of assumpsit will lie for money had and received for the use of the plaintiff wherever by means of a contract relation the defendant has





obtained possession of money which in justice he ought to return. (Arnold vs. Dodson 272 Ill. 377)

Even though the form of action in this case is wrong, an objection on that ground should have been specifically urged at the first opportunity so that the pleadings might have been amended, and it is now too late to raise that question. (Citizen's Gas Light and Heating Co., vs. Granger & Company 118 Ill. 266).

Appellant makes the general statement in his argument that the instructions given for appellees did not state the law correctly, but that those offered by appellant and refused contained a correct statement of the law. Under our holding as to the law as above set forth there was no error in the courts rulings on the instructions. No reversible error appearing in the record the judgment should be and is affirmed.

AFFIRMED.

NOT TO BE REPORTED.

• • •

1894

1925

*Journal of Management Education*

1. *Phragmites* (common)

1. The first group of people who are interested in the study of the history of the United States are the people who are interested in the history of the United States.

[illegible]

10

*Journal of Interpersonal Violence* 26(10)

*Journal of the American Medical Association*

• • • • •

[illegible]

1. *Chlorophyll a* (Chl *a*)

1 : 1

• • • • •

1917: 1 400

1890

1875

• • • • •

1990

• *Chrysomelidae* (Colorado potato beetle)



3937 a

STATE OF ILLINOIS  
APPELLATE COURT  
4TH DISTRICT

FILED

JUL 7 1924

Robert B. Roe  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

MARCH TERM A. D. 1924.

234 T. A. 654

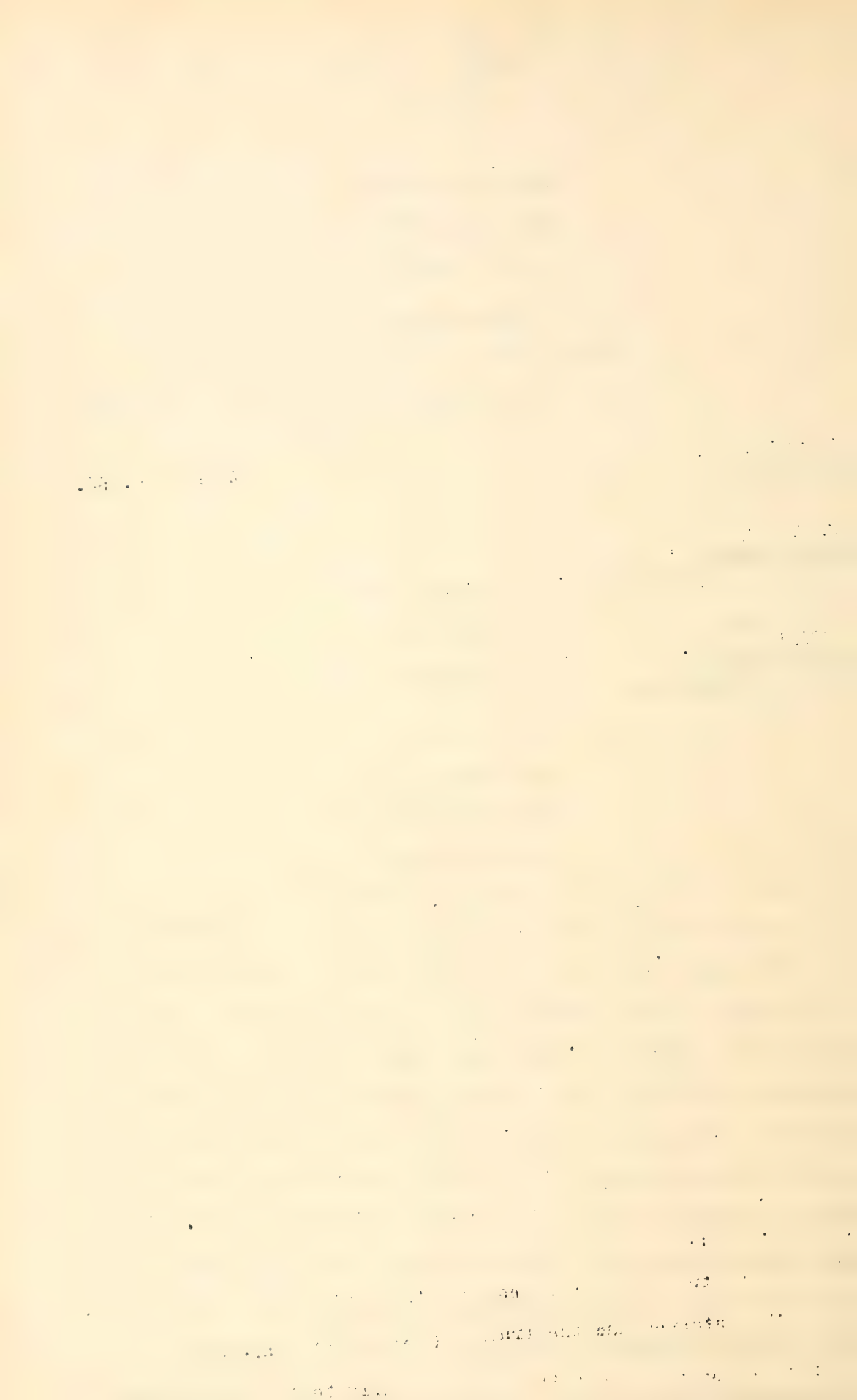
Term No. 55.

Agenda No. 50.

|                |   |                |
|----------------|---|----------------|
| EDWARD OREAL,  | : |                |
| Appellee,      | : | APPEAL FROM    |
|                | : |                |
| -vs-           | : | ST CLAIR       |
|                | : |                |
| EDWARD DOLLAR, | : | CIRCUIT COURT. |
| Appellant,     | : |                |

OPINION BY HIGBEE, J.

Appellee recovered a verdict and judgment for personal injuries received at the intersection of State and 27th Streets in East St. Louis. State runs east and west and crosses 27th at about right angles. Appellee was walking on the south side of State street and as he approached the crossing from the east, appellant's delivery boy, - sixteen years of age, - in a Ford truck was coming from the west. Two boys, twelve and fourteen years old were with him. As the truck reached the crossing the boy signalled that he would turn south on 27th street. Appellee testified that he saw and heard the signals when he had taken but two or three steps from the east curb of 27th street; that he then stopped and the truck was moving at a speed of 20 miles per hour and that it was over nearly to the east curb; that he stepped back and the truck seemed to be going farther to the



east and he then moved forward when the driver turned to the south-west and struck him. In this he was corroborated by one of the boys on the truck. On the whole evidence the jury was warranted in finding that the truck, in making the turn, was east of the center of 27th street. The driver practically admits that this is true because he says that when he started to turn appellee was half way across the street and that he tried to pass behind him.

The questions of negligence and contributory negligence were questions of fact for the jury and the court did not err in refusing to direct a verdict. We would not be warranted in holding that the verdict is so manifestly against the weight of the evidence, that it should be set aside. It is argued that the verdict is excessive. Appellee was bruised and suffered a fracture of the malleolus in his right ankle. He was injured on March 17th and was in bed for two weeks and was then on crutches until May 24th and returned to work on May 28th. The undisputed evidence is to the effect that the use of the ankle is impaired and will be for an indefinite time. He was earning \$3.93 per day when injured and lost about \$875.00 in wages and paid a doctor bill of \$35.00. The verdict was for \$1,000.00 and we cannot say it is excessive. Fourteen instructions were asked by appellant and twelve of them were given. The two that were refused were fully covered by those that were given. No reversible error has been pointed out and the judgment is affirmed.

Affirmed.

NOT TO BE REPORTED.





(39516)

60

Term No. 80

Agenda No. 11.

STATE OF ILLINOIS  
APPELLATE COURT  
FOURTH DISTRICT

234 T.A. 654

FILED

JUL 7 1924

Robert B. Roe  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

Evaline Mundy,  
Appellee,

-vs-

Earl Leighty et al,  
Appellants.

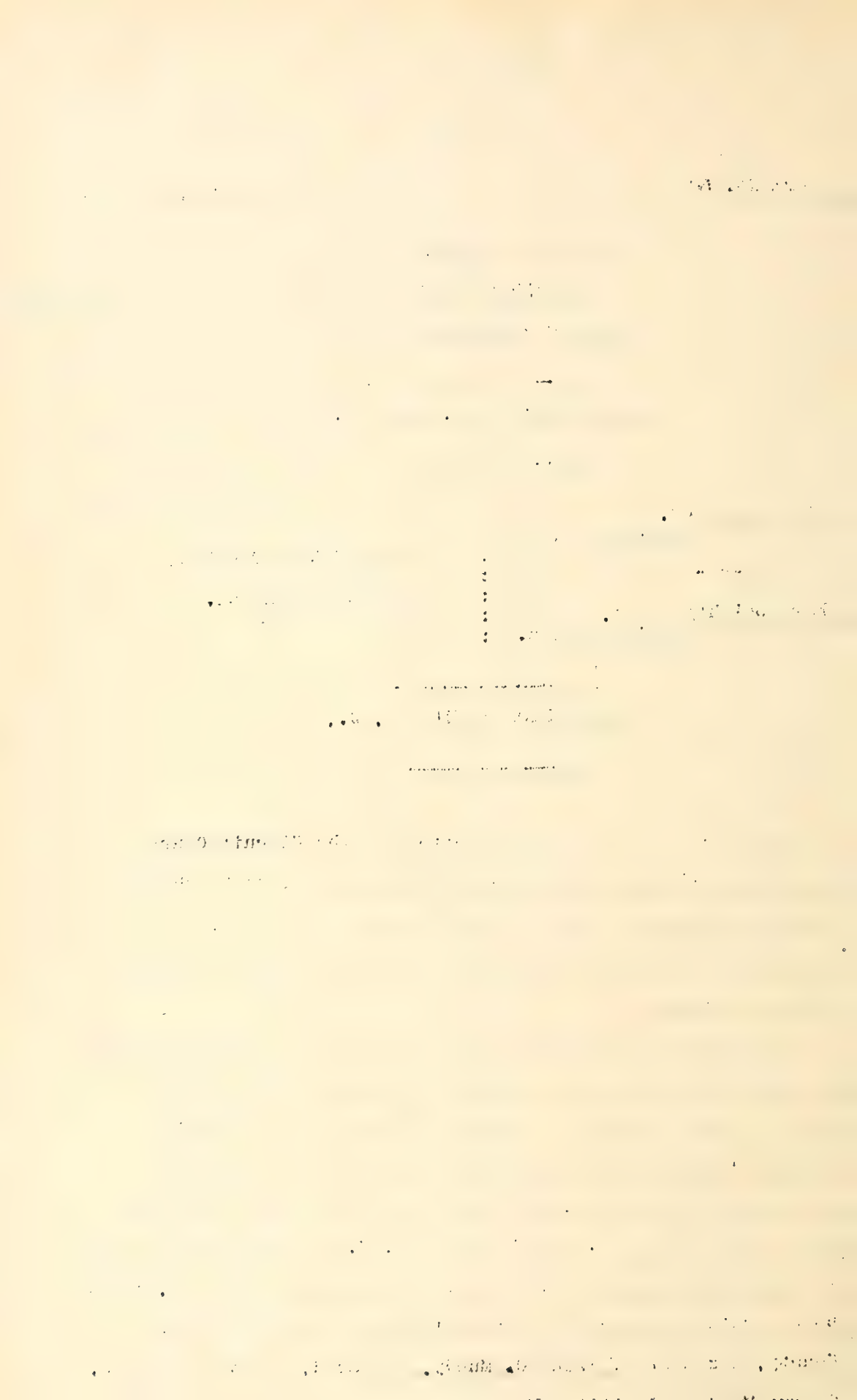
:  
:  
:  
:  
:  
:  
:

APPEAL FROM CIRCUIT  
COURT OF WABASH.

OPINION BY HIGBEE, J.,

This is an appeal from a decree of the Circuit Court of Wabash County finding appellee, Evaline Mundy, to be the owner of a certain promissory note for Two thousand dollars, dated November 20, 1918, executed by Earl Leighty and Leah L. Leighty to Frank C. Mundy.

It appears that Frank C. Mundy, payee in the above mentioned note died on the 4th day of April, 1921, aged about 57 years leaving a will in which he nominated appellant, M. H. Mundy, Executor. Frank C. Mundy had never married until about two years before his death, when he married a women with a daughter fifteen years of age. In May 1921, M. H. Mundy as Executor of the Last Will and Testament of said Frank C. Mundy, deceased, instituted a citation proceeding against Evaline Mundy of Richland County, a sister of Frank C. Mundy, deceased, and her two sons, George Mundy and William Mundy of Wabash County to discover property belonging to the estate. Citations were issued as





prayed, and the parties appeared in Court and were examined concerning said note and mortgage. Evaline Mundy claimed that the deceased had given them to her in his lifetime, and that she was the owner thereof. The County Court found the note and mortgage to be a part of the estate of said Frank C. Mundy, deceased, and ordered them delivered over to the Executor. An appeal was prosecuted from this order to the Circuit Court of Wabash County, and the note and mortgage ordered to be deposited with the Clerk of that Court. At the April Term 1922, of the Circuit Court the appeal was dismissed upon the motion of the executor. From the order dismissing the appeal Evaline Mundy appealed to the Appellate Court. While the cause was pending in the Appellate Court Evaline Mundy, appellee herein, filed her bill to the April term 1923 of said Circuit Court for a foreclosure of the mortgage alleging that Frank C. Mundy in his lifetime for a valuable consideration assigned and transferred the note and mortgage to her, and that she then owned the same. The mortgagors Earl Leighty and Leah L. Leighty were made parties defendant and also Harvey Couch and Reuben Mundy, who were alleged to have or claim to have some interest in or to the mortgaged premises as purchasers or otherwise, but which interests if any, were alleged to be subject to the lien of said mortgage. None of the defendants to such foreclosure proceeding appeared <sup>save</sup> Harvey Couch who filed an answer admitting the execution and delivery of the note and alleged that he had purchased the mortgaged premises from Earl Leighty subject to said mortgage indebtedness which as a part of the purchase price he had assumed and agreed to pay and was ready, willing and able to pay, but was unable to do so, because of the litigation concerning the ownership thereof. The answer further set up a detailed history of this litigation. Said defendant also filed a cross bill setting up substantially the same facts as alleged in his answer and making M. H. Mundy

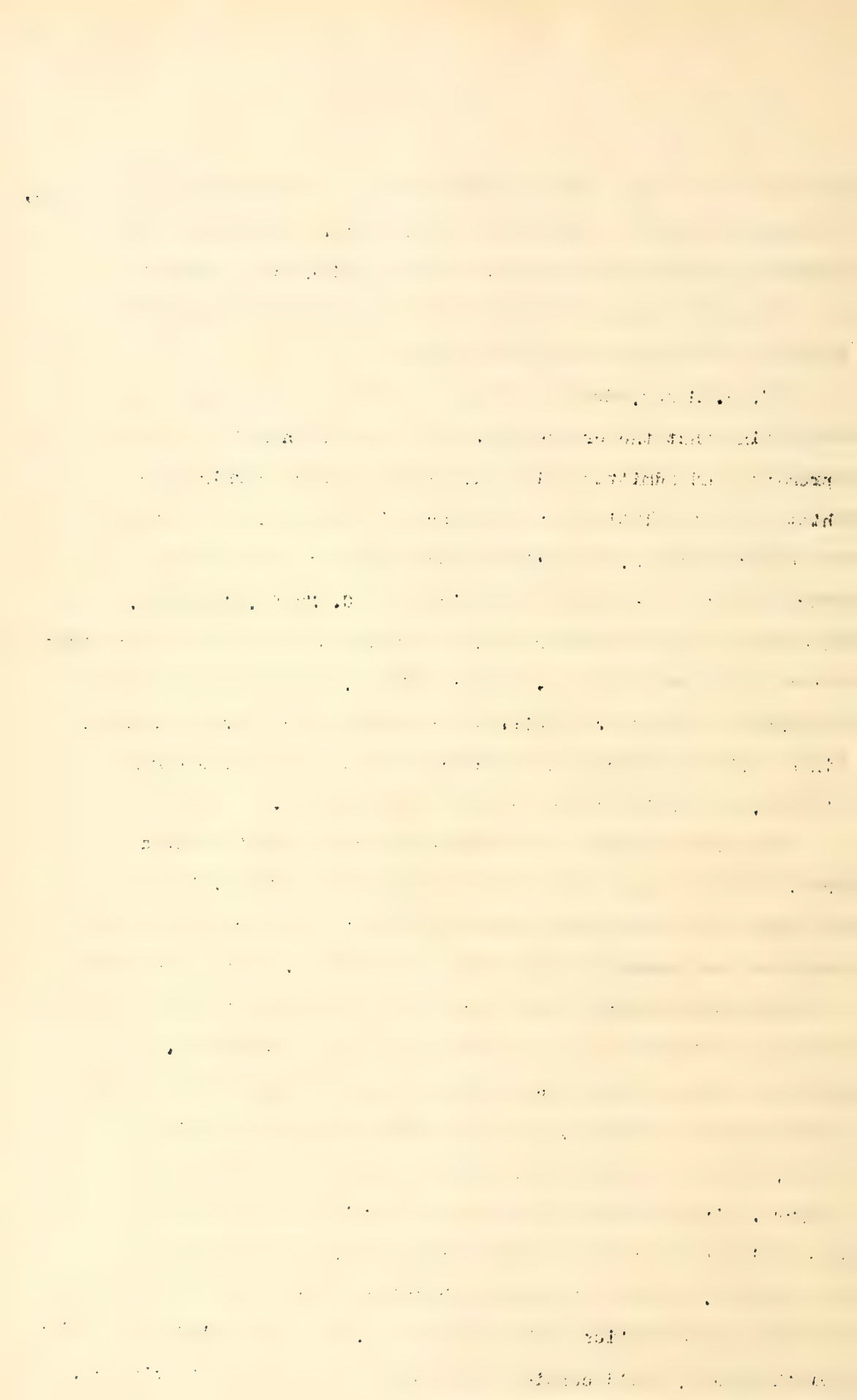


Executor of the Last Will and Testament of Frank C. Mundy, deceased, a defendant thereto. The cross bill further alleged that the answering defendant was not in collusion with either party to the litigation concerning the owner of the note and mortgage and prayed to be dismissed with his costs.

M. H. Mundy, Executor filed an answer to this cross bill admitting that the cross-complainant had purchased the mortgaged premises and admitting also the allegations concerning the history of the litigation and concerning the ownership of the note and mortgage, but alleging that the note and mortgage were a part of the estate of said Frank C. Mundy, deceased, and that as such Executor he was entitled to said note and mortgage or the money due thereon. Evaline Mundy, appellee, also filed an answer to this cross bill again alleging that Frank C. Mundy in his lifetime assigned and delivered the note and mortgage to her, and that she was the owner of the same.

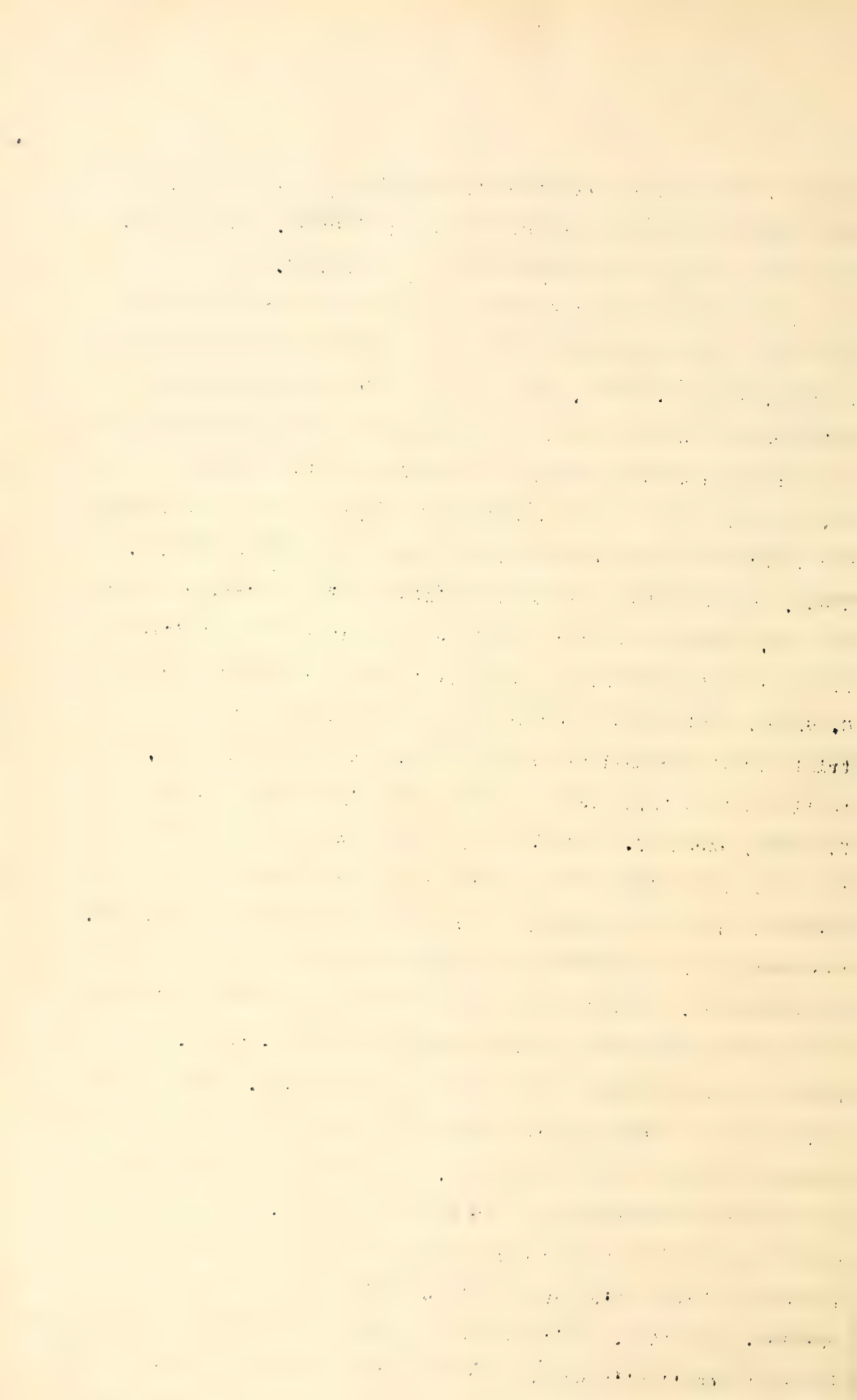
After the filing of these pleadings the court ordered Harvey Couch to pay to the Clerk of the Court \$2288.67 which was found to be the amount due on the note and mortgage, and the cause was continued to the November Term 1923. Before that term of Court, the Appellate Court reversed the judgment of the Circuit Court in said former case and that cause was remained. Upon that cause being redocketed the Circuit Court by agreement of the parties combined the foreclosure suit and the citation case, and the two cases were heard as one by the Court without a jury. It was stipulated that all parties might introduce any evidence that would be competent if proper pleadings had been filed, and that the Court should hear all evidence introduced by any of the parties without objection, but in final determination of the cause, would consider only proper and competent evidence. Upon the hearing the Court found that the note and mortgage were for a good consideration assigned and transferred by the said





Frank C. Mundy in his lifetime to appellee, Evaline Mundy,  
Couch  
and ordered the money paid into Court by Council, paid to her.  
From that decree this appeal has been prosecuted.

The only question involved in this case is as to whether the note and mortgage referred to were given to appellee by her brother, Frank C. Mundy, now deceased. It appeared from the evidence that deceased had at one time said note and mortgage and a one hundred dollar bond in the American National Bank at Mt. Carmel, and that George Mundy the 37 year old son of appellee who lived about two miles from the home of his Uncle Frank C. Mundy, and who during his Uncle's illness did considerable work for him, appeared at this bank in January 1921 with a written order directing the Bank to deliver to him all papers of Frank C. Mundy. This written order was not in evidence at the trial for it became lost or misplaced. The Banker however, testified that this order bore the true signature of Frank C. Mundy, deceased. George Mundy testified that he turned the note and mortgage over to his Uncle who appears to have endorsed the note in blank, and later as said witness testified, his uncle in the presence of witnesses gave the note and mortgage to his mother. Some little time afterwards a written assignment of the note and mortgage was executed by Frank C. Mundy, before a Notary Public and also given to appellee. On the other hand there was also some testimony as to the statements made by the deceased shortly before his death, and after the alleged gift of the note and mortgage to his sister was made, that he still owned them, and that they were in the bank and that the banker because of them would advance him credit for a contemplated surgical operation. While there were some discrediting circumstances shown by appellant's proof concerning the execution of the written assignment by deceased, and also some conflict in the proof in other particulars, yet the case was fairly presented to the trial





Judge who by seeing and hearing the witnesses was in better position than we are to ascertain the exact truth concerning the transactions, in question, and we do not feel at liberty to disturb his findings, nor does the proof seem to demand it.

The decree will therefore be affirmed.

AFFIRMED.

NOT TO BE REPORTED.

*No petition for Rehearing  
filed -*



3952a

Term No. 72

Agenda No. 47

In The  
APPELLATE COURT  
FOURTH DISTRICT  
MARCH TERM A.D. 1924.

FILED

JUL 7 1924

Robert B. Roe  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

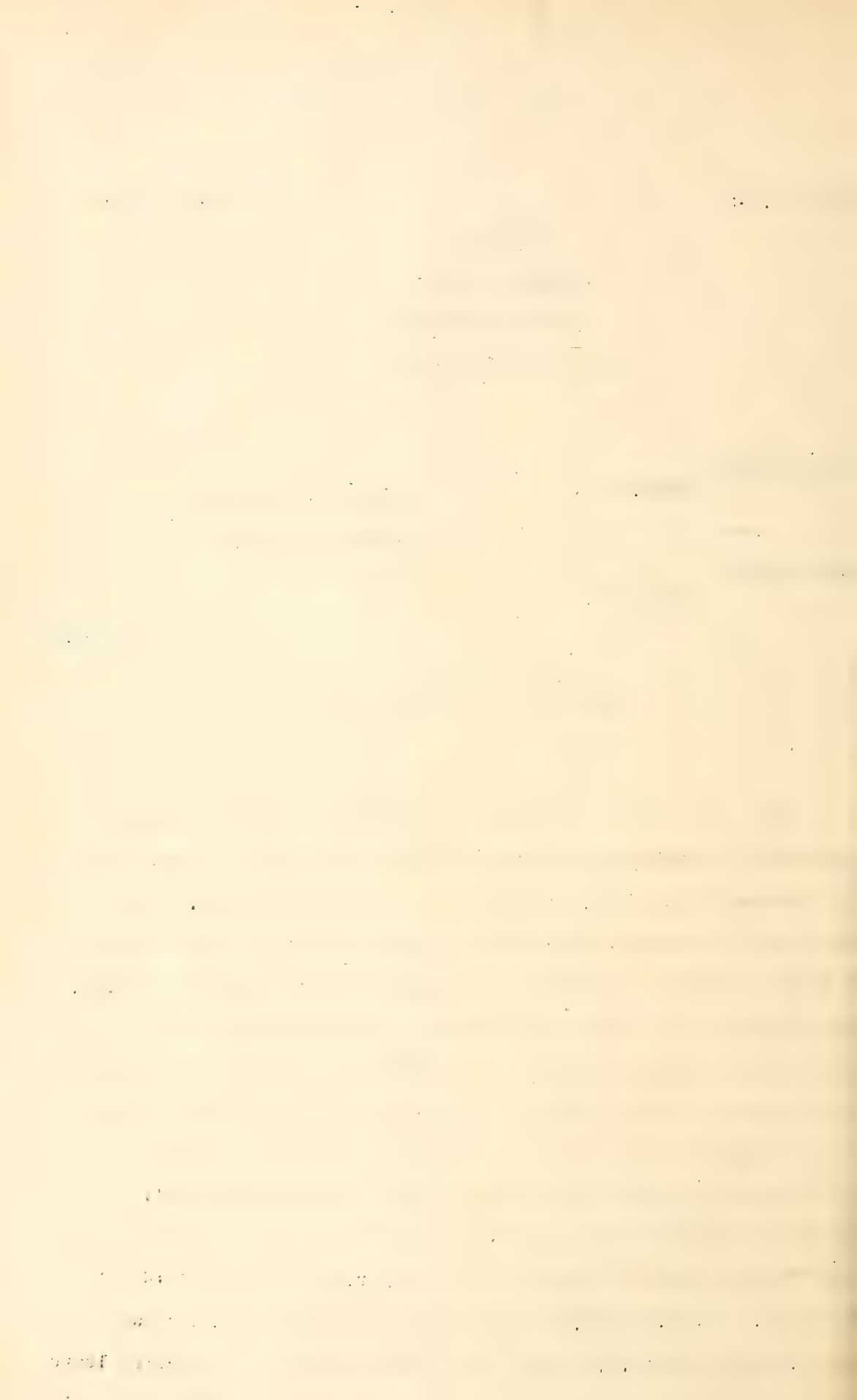
|               |   |                     |
|---------------|---|---------------------|
| ASA SPRINGER, | : |                     |
| Appellee      | : | APPEAL FROM CIRCUIT |
| -vs-          | : |                     |
|               | : | COURT OF MADISON    |
| HENRY BUFE    | : |                     |
| Appellant,    | : | COUNTY.             |

234 J.A. 654

OPINION BY HIGBEE, J.

This is an action in trespass brought by appellee against appellant for false imprisonment. The declaration was filed to the October Term of the Circuit Court of Madison County. The cause was continued to the January Term 1924 and on trial before a jury a verdict was returned for appellee in the sum of \$150.00. The facts so far as they are material to this case show that appellee was a police officer of the City of Woodriver and appellant was a Justice of the Peace. It appears that appellee was brought before appellant upon a charge of having violated some City ordinances, and that his hearing was set for August 3, 1921. Appellant testified that appellee then told him he would not be in his Court on the 3rd without stating any reason why he would not be there. Appellee denies this statement. The evidence shows that the City officials before the arrest had granted appellee leave of absence for his vacation, extending beyond August 3rd, and he did not appear at the trial on that date. The case was therefore

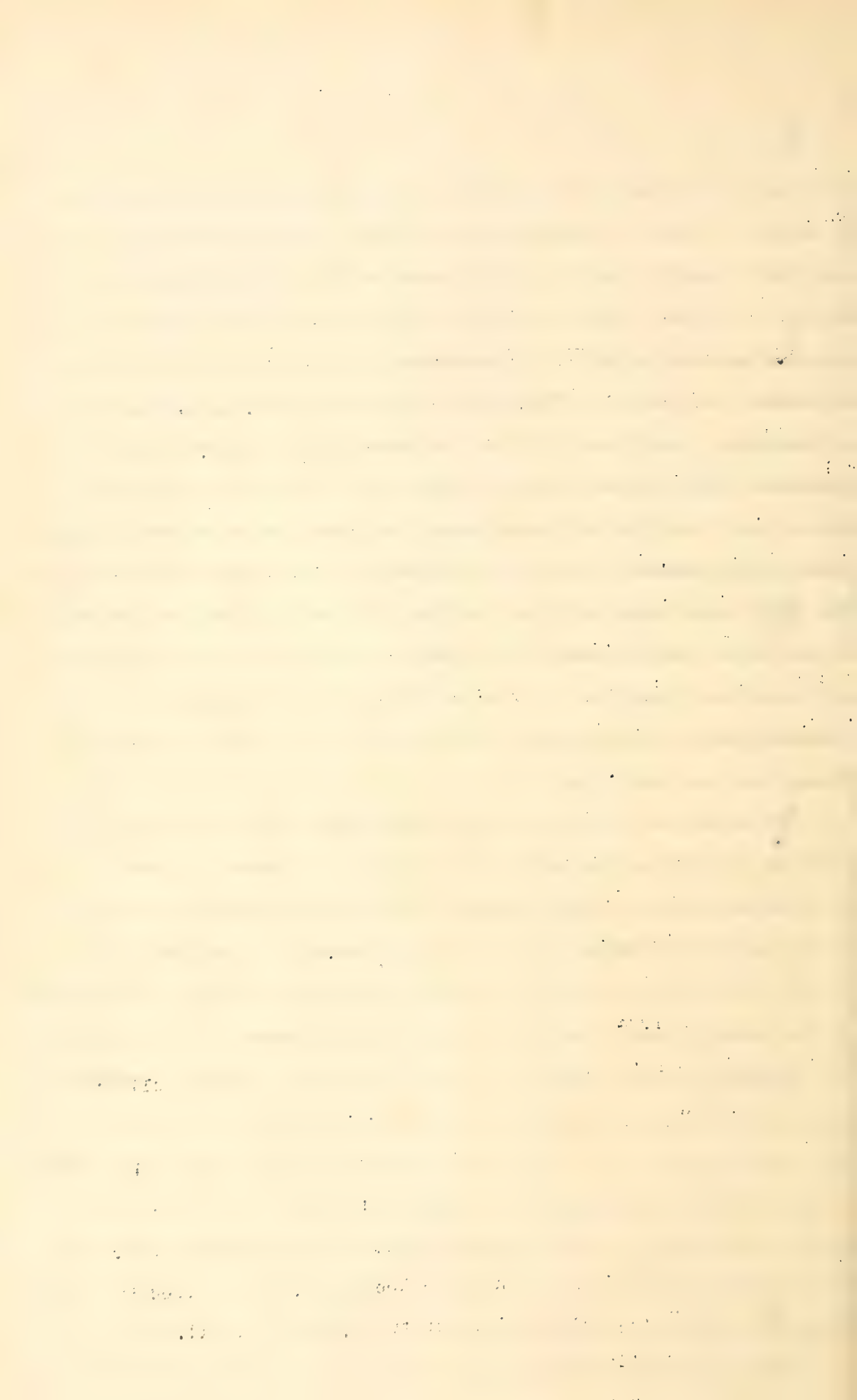




continued until August 13th when appellee appeared and applied for a change of venue. Appellee testified that after appellant had made out the transcript for change of venue he than asked appellee why he did not appear when the case was set for trial and appellee replied because he was on his vacation and appellant said, that is no excuse and fined him \$10.00 for contempt of court, and handed a Constable a mittimus which he had theretofore prepared; that appellant gave him 24 hours in which to pay his fine at the end of which time, the fine not being paid, the constable upon the mittimus theretofore issued, took him to the County jail where he was confined for some hours until he paid the fine and costs. Appellee contends it was after the transcript for change of venue was made out that he was fined. Appellant on the contrary contends and he is corroborated by the Constable that the fine was imposed before the transcript was made out.

It is claimed by appellant in his argument that the Court erred in overruling his motion for a change of venue. No error is assigned covering this question and it might well be considered as not saved for review by this Court. However, in our opinion it was not error for the trial court to deny this motion. It was made at the January term 1924 to which the case had been continued from the preceding October term. The record does not show that appellant gave appellee ten days previous notice of his intention to make this application or that the causes stated for the change had arisen or come to the knowledge of appellant within less than ten days before the making of the application or since the preceding October Term at which the application might have been made, as required by Section 6 and 7 of Chapter 146 Revised statutes, (Smith 1921).

The second instruction given on behalf of appellee advised the jury that under the laws of this State appellant as Justice of the Peace had no right or authority to impose a fine upon appellee

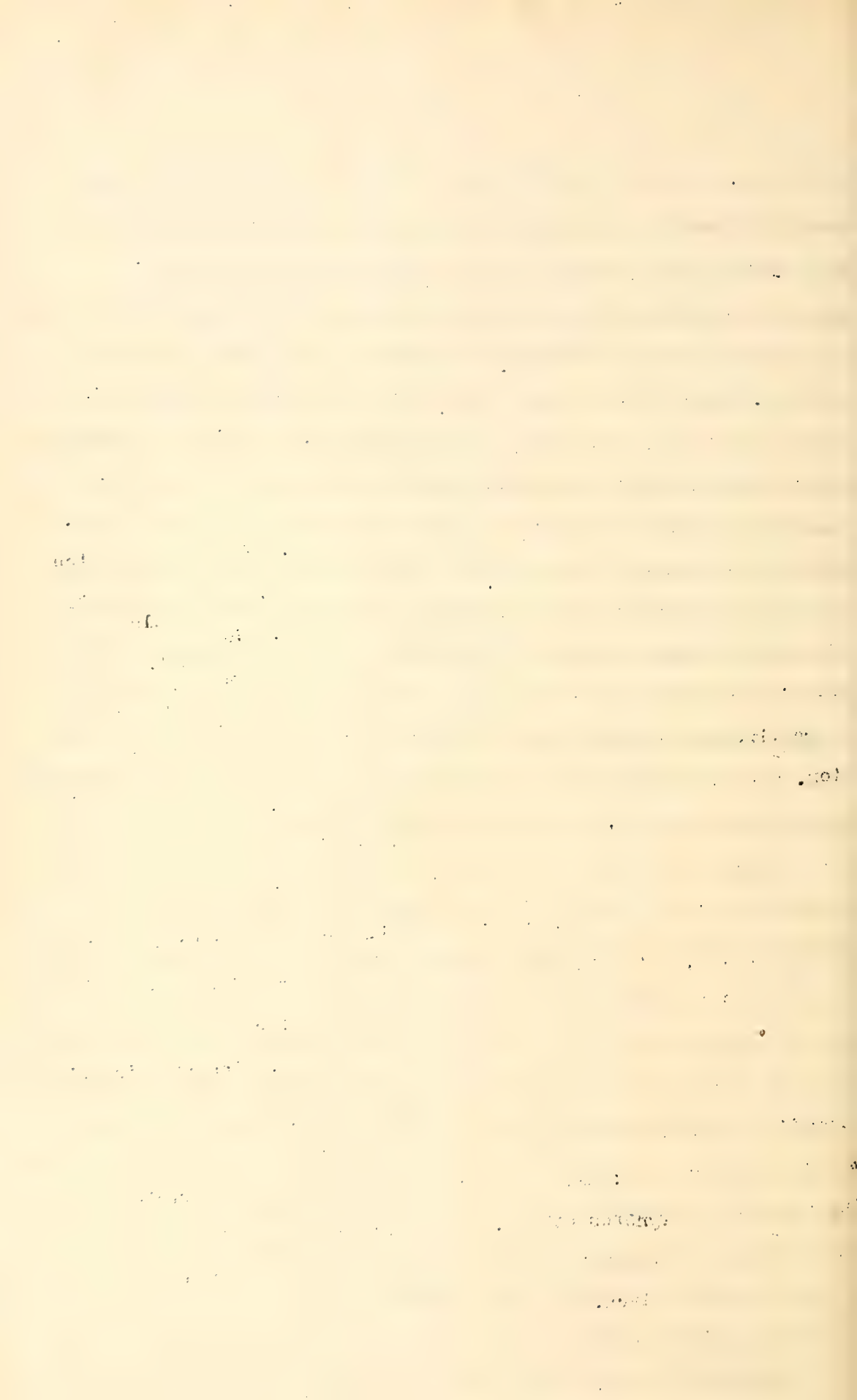




for contempt of court or to commit him to jail for failure to pay such fine merely for failing to appear at the trial of a case pending before such justice in which appellee was defendant. Appellant criticizes this instruction because as he claims it is "wholly at variance with the facts and evidence in the case, and is not a fair statement of the law." The instruction is not carefully drawn, but it is based upon the statement in the order of commitment, that appellee had been adjudged guilty of contempt of court for failure to appear for trial in a case in which he was defendant, and for not making an apology for his conduct. This was also the clear, if not uncontradicted, proof in the case. The instruction correctly states an abstract principal of law. No justice of the peace has the right to impose a fine for contempt of court simply because a party does not appear for trial before him at the time fixed for trial and there was no error in giving this instruction, although the form might have been improved.

Complaint is also made that the third instruction which advised the jury that even though they might believe from the evidence that appellant was acting as Justice of the Peace at the <sup>in</sup> time/question, yet this fact alone would not prevent him from being found liable if he unlawfully caused appellee to be confined in the common jail as charged in the declaration. Appellant's criticism of this instruction appears to be that the jury might infer from it that a justice of the peace had no power to fine for contempt of court in any case; also that it calls attention to certain facts in evidence and ignores others. A careful consideration of this instruction leads to the conclusion that it is not objectionable and was properly given.

Appellee's fourth instruction informs the jury that if it is believed from a preponderance of the evidence appellant while acting as such Justice of the Peace issued the mittimus and



delivered the same to the Constable and the Constable acting thereunder caused appellee to be confined in the jail that appellant of the Constable in the same manner as if he had done such acts then would be responsible for such acts/himself. The criticism of this instruction is that while a Justice may be liable for directing and causing a Constable to act in some instances it would not be true to the extent set out in this instruction. This instruction when read in connection with the other instructions properly informed the jury as to the law on the subject to which it was devoted.

Appellant also states that the Court erred in refusing three instructions offered by him, but without making any comment thereon or pointing out in what particular it was error to refuse them. An examination of these instructions however shows that they did not state ~~correct~~ rules of law applicable to this case, and they were rightly refused.

The judgment in this case was warranted by the facts and the law, and it is accordingly affirmed.

AFFIRMED.

NOT TO BE REPORTED.





Term No.15.

Appellate Court  
of Illinois.  
Fourth District.

234 I.A. 655

Agenda No.8

FILED

JUL 7 1924

Robert B. Noel  
CLERK OF THE APPELLATE COURT  
FOURTH DISTRICT OF ILLINOIS

March Term, A.D.1924.

The People of the State of  
Illinois, Ex Rel Marjorie  
Ikemire,

Appellee.

vs

Cecil Vaughn.

Appellant.

Appeal from County Court  
of  
Crawford County.

This is a bastardy proceeding brought by Marjorie Ikemire, Relatrix, against the defendant, Cecil Vaughn, who will hereafter be referred to as the defendant. Upon the first trial of this matter the jury failed to agree. At a re-trial of the cause defendant was found guilty. A motion to set aside the verdict was overruled and judgment entered against the defendant from which this appeal was perfected.

The relatrix testified that she first had sexual relations with the defendant about the second week in August 1922, when he took her from the village of Porterville, to her home about  $1\frac{1}{4}$  miles west of the village, and again on the 13th day of September 1922. The relatrix was 16 years of age on the 14th day of January 1923, and her child was born June 7, 1923. The brother of relatrix and one other witness testified to seeing the relatrix and the defendant together on the night of September 13. The Sheriff who arrested defendant testified that when arrested defendant said "he was not the only fellow who had been with the girl." Other witnesses testified to a statement by the defendant in which he referred to the child as his child or "his kid". Defendant denied that he was with relatrix in August 1922, or the night of September 13, 1922, and also denied that he had ever had improper

1887

1888

1889

1890

1891

1892

1893

1894

1895

1896

1897

1898

1899

1900

1901

1902

1903

1904

1905

1906

1907

1908

1909

1910

1911

1912

1913



relations with her at any time. Defendant's mother, brother, uncle and aunt testified that the defendant was at his own home and in their presence until about 9 o'clock on the evening of September 13, at which hour the aunt and uncle went to their home and the mother and two brothers retired.

The first assignment of error argued for appellant is that the Court permitted improper cross examination of the defendant's father John Vaughn. The witnesses who testified that defendant was at home on the evening of September 13, also testified that the father, John Vaughn, was not at home at that time, but was attending the Fair at Newton. To corroborate these witnesses the father was placed on the witness stand and testified that he was in Newton at said time. On cross examination he was asked if he had not taken an active interest in this case, and if he had not told Kenneth Burcham to say when he was asked whether others had not had relations with the girl "that is a had question for me to answer" or words in substance the same; and that if he should be asked on the witness stand if relatrix "had a bad reputation and virtue was bad", for him to say, "Yes". The father denied making these statements to said Burcham. This first question referred to was objected to and objection overruled, which ruling of the Court is urged as error. In rebuttal the witness Burcham was placed on the stand and testified the father did make the statements to him embodied in the questions asked on cross examination. It is urged that the trial court erred in permitting this proof of the witness, Burcham. The record discloses however, that no objection was made at the trial to the testimony of the witness Burcham. That being the case defendant is in no position to raise the question of the admissibility of Burcham's evidence on this appeal (Wrigley vs. Cornelius 162 Ill. 92.) The question whether the first interrogatory put to defendant's father above referred to was



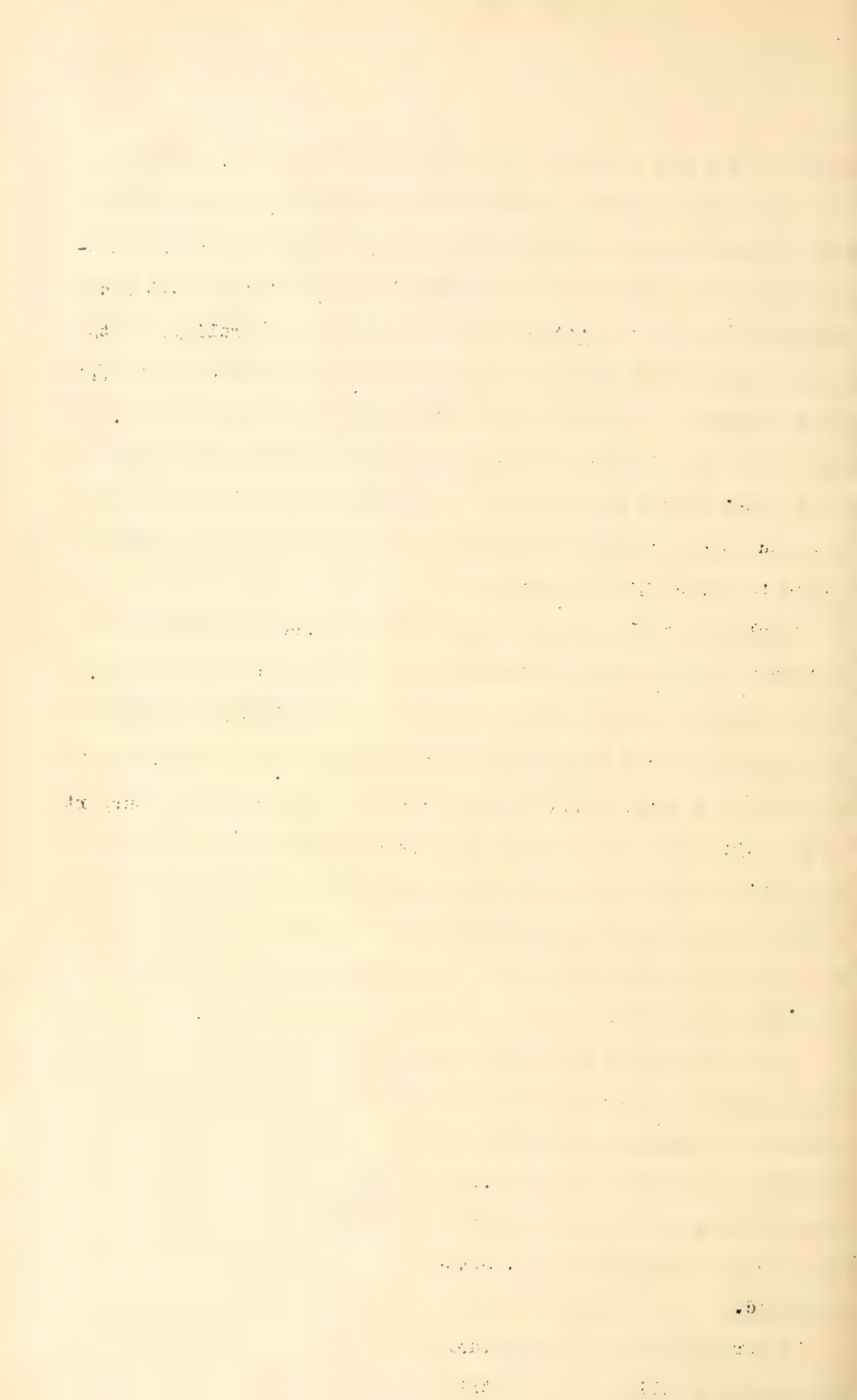
proper or not was saved by objections upon the trial. However, this question was asked upon his cross examination and the latitude allowed in the examination of a witness upon cross examination rests very largely in the discretion of the trial court and a judgment will not be reversed for alleged improper rulings in that respect unless such discretion has been clearly abused by the trial court. (Brennen vs Chicago and Carterville Coal Co., 241 Ill. 610 and People vs Campbell 201 Ill.App. 215.) We cannot say that the trial court abused such discretion in permitting this question to be asked on cross examination of the witness since it to some extent tended to effect his credibility.

Complaint is also made that the Court refused to exclude the testimony of the witness, Milsap, sworn in behalf of the relatrix, who testified to a portion of a conversation by a witness in behalf of the defendant named Effie Tuttle, with several other persons in the presence of Milsap for the reason that the witness did not purport to give all the conversation. The witness Tuttle had denied in her examination that part of the same conversation which was testified to by the witness Milsap, and it was not reversible error to refuse to exclude the testimony of the latter because he could not state the entire conversation.

It is also urged that this judgment should be reversed because the verdict is contrary to the manifest weight of the evidence. The evidence is somewhat contradictory. The relatrix and defendant directly contradict each other. In certain respects the relatrix is corroborated, and in some respects, especially as to the fact that he was at home on the evening of September 13, the defendant is corroborated.

The proof was for the consideration of the jury and they determined to believe the relatrix and her witnesses. This determination of the jury was approved by the trial court by overruling.

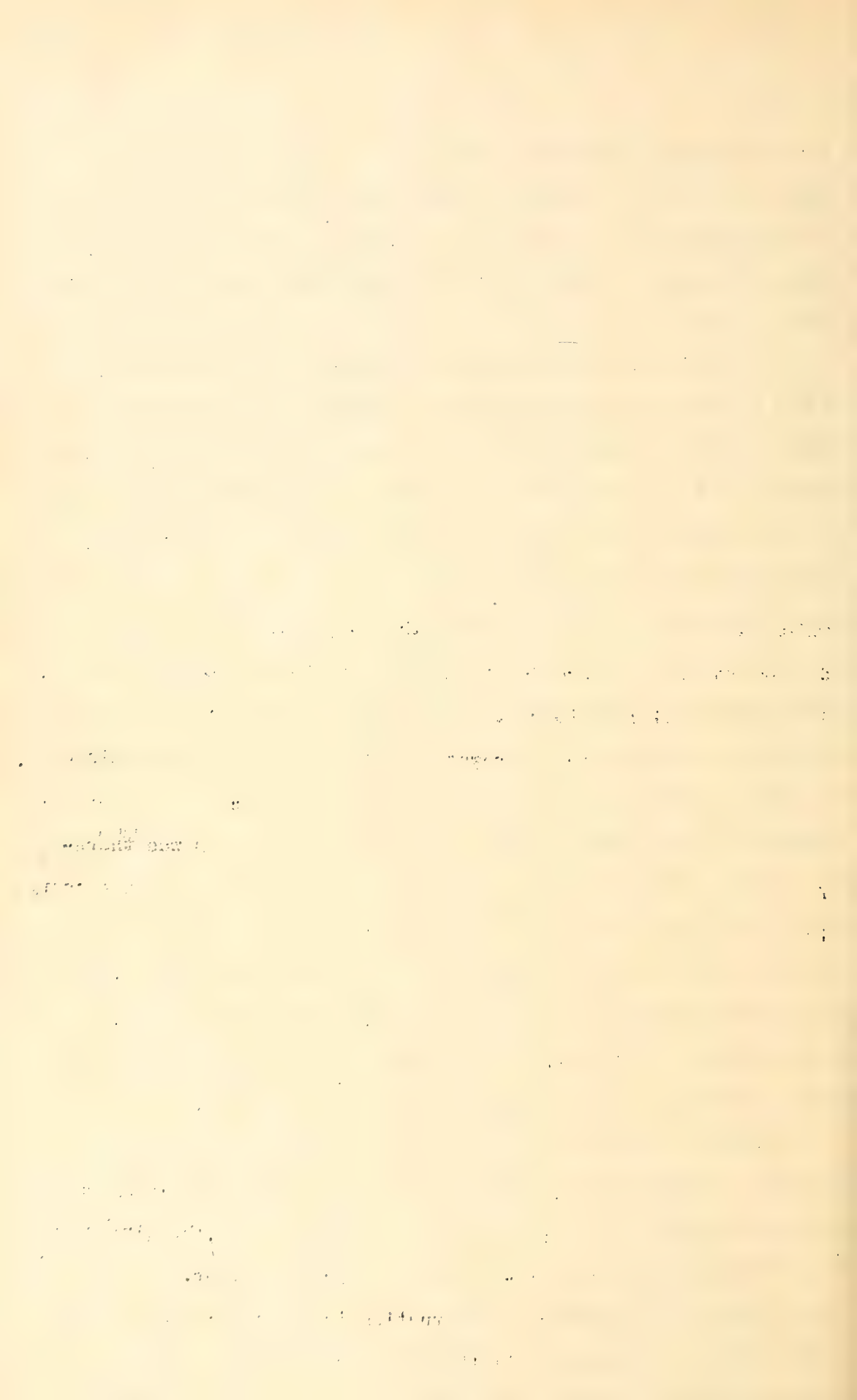




the motion for a new trial. Under such circumstances, and the decisions of our courts, such verdict and judgment, in the absence of error appearing on the record, should not be disturbed by this Court. (People vs Lucas 193 Ill. App. 431; People vs Singleman 209 id 52 ).

It is further insisted that it was error for the trial Court to give the second instruction offered in behalf of relatrix which stated in substance, that if the jury believed from a preponderance of the evidence the defendant was the father of the child, it was immaterial as to what day of the week or what day of the month the relatrix became pregnant. It is argued that in this case, under the testimony of relatrix, she could have become pregnant only on the 13th day of September, and that the instruction was therefore improper. Instructions to the effect that it is not necessary in bastardy cases for the prosecutrix to show the exact day when the act of intercourse resulting in pregnancy occurred, have been approved by our courts. People vs Kirby 199 Ill. App. 91. Handley vs People 196 id. 556. ) It is true that relatrix testified as to this exact date, yet in view of the testimony offered by defendant tending to show relatrix was in Company with other young men about this time and in view also of defendants testimony on the question of an alibi on this particular evening, the giving of this instruction does not constitute reversible error.

Appellant criticises an instruction in behalf of relatrix stating in substance that if there was no evidence causing the jury to believe that some person other than defendant was the father of the child, then the jury had no right to presume that some person other than the defendant was the father. This instruction states a true rule to be applied by the jury in considering a phase of the evidence. It was certainly true that no one against whom there was no evidence on the subject could be presumed to be the father of the child, but the language used was not carefully considered,



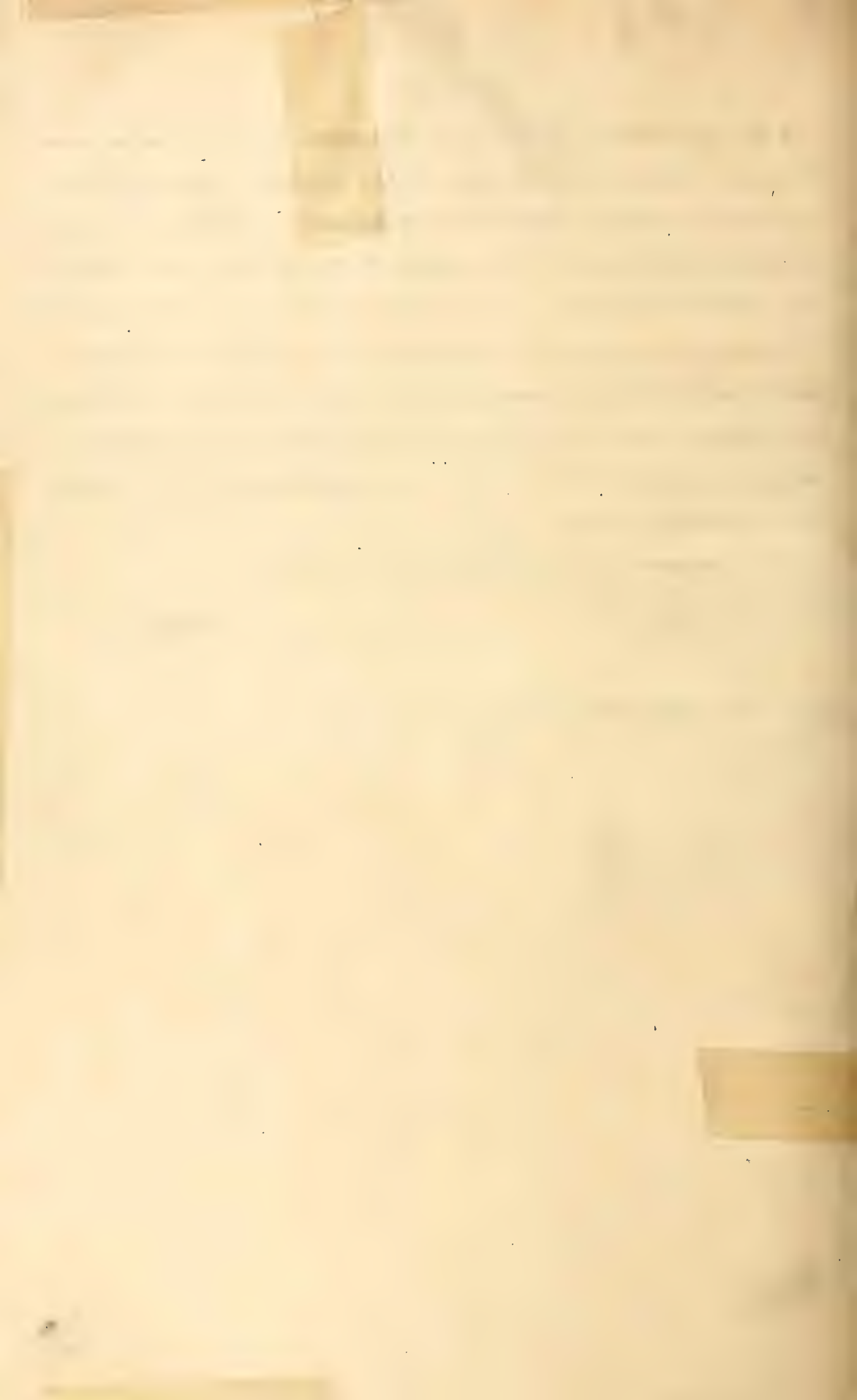


and the instruction is not to be commended. In fact in some cases it might necessitate a reversal of the judgment. However, in this case where testimony was offered by defendant tending to show that other young men were in the company of the relatrix about the date she testifies she became pregnant, and in view of the fact that the instructions given for the defendant clearly told the jury that before relatrix could recover she must prove by a preponderance of the evidence that the defendant was the father of her bastard child, we hold that the giving of this instruction did not constitute reversible error.

The judgment of the County Court is affirmed.

AFFIRMED.

Not to be reported.









RESERVE BOOK

Ill. Unpublished Opinions

234

75581

Borrower who signs this card is responsible for the book in accordance with the posted regulations.

Avoid fines and preserve the rights of others by obeying these rules.

[illegible]



